

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODYName RosBeugh, Cody
(Last) (First) (Initial)Prisoner Number J-81708Institutional Address Pelican Bay State Prison, SAL; PO Box
7500, Crescent City, CA. 95532FILED
FEB 27 2008
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**Cody Rosbeugh (Plaintiff)
(Enter the full name of plaintiff in this action.)

vs.

Robert Horel, warden et al.,
(Defendant(s))

CV

08

1178

Case No. _____
(To be provided by the clerk of court)**PETITION FOR A WRIT
OF HABEAS CORPUS**

(Enter the full name of respondent(s) or jailor in this action)

Read Comments Carefully Before Filling In**When and Where to File**

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

PET. FOR WRIT OF HAB. CORPUS

- 1 -

08-1178JF

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or jailor. Do not name the State of California, a city, a county or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainees), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

1. What sentence are you challenging in this petition?

- (a) Name and location of court that imposed sentence (for example; Alameda County Superior Court, Oakland):

_____	_____
Court	Location

- (b) Case number, if known _____

- (c) Date and terms of sentence _____

- (d) Are you now in custody serving this term? (Custody means being in jail, on parole or probation, etc.) Yes _____ No _____

Where?

Name of Institution: _____

Address: _____

2. For what crime were you given this sentence? (If your petition challenges a sentence for more than one crime, list each crime separately using Penal Code numbers if known. If you are challenging more than one sentence, you should file a different petition for each sentence.)

3. Did you have any of the following?

Arraignment: Yes _____ No _____

Preliminary Hearing: Yes _____ No _____

Motion to Suppress: Yes _____ No _____

4. How did you plead?

Guilty _____ Not Guilty _____ Nolo Contendere _____

Any other plea (specify) _____

5. If you went to trial, what kind of trial did you have?

Jury _____ Judge alone _____ Judge alone on a transcript _____

6. Did you testify at your trial? Yes _____ No _____

7. Did you have an attorney at the following proceedings:

(a) Arraignment Yes _____ No _____

(b) Preliminary hearing Yes _____ No _____

(c) Time of plea Yes _____ No _____

(d) Trial Yes _____ No _____

(e) Sentencing Yes _____ No _____

(f) Appeal Yes _____ No _____

(g) Other post-conviction proceeding Yes _____ No _____

8. Did you appeal your conviction? Yes _____ No _____

(a) If you did, to what court(s) did you appeal?

Court of Appeal Yes _____ No _____

Year: _____ Result: _____

Supreme Court of California Yes _____ No _____

Year: _____ Result: _____

Any other court Yes _____ No _____

Year: _____ Result: _____

(b) If you appealed, were the grounds the same as those that you are raising in this

1 petition? Yes _____ No _____

2 (c) Was there an opinion? Yes _____ No _____

3 (d) Did you seek permission to file a late appeal under Rule 31(a)?

4 Yes _____ No _____

5 If you did, give the name of the court and the result:

6 _____

7 _____

8 9. Other than appeals, have you previously filed any petitions, applications or motions with respect to
9 this conviction in any court, state or federal? Yes _____ No _____

10 [Note: If you previously filed a petition for a writ of habeas corpus in federal court that
11 challenged the same conviction you are challenging now and if that petition was denied or dismissed
12 with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit
13 for an order authorizing the district court to consider this petition. You may not file a second or
14 subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28
15 U.S.C. §§ 2244(b).]

16 (a) If you sought relief in any proceeding other than an appeal, answer the following
17 questions for each proceeding. Attach extra paper if you need more space.

18 I. Name of Court: _____

19 Type of Proceeding: _____

20 Grounds raised (Be brief but specific):

21 a. _____

22 b. _____

23 c. _____

24 d. _____

25 Result: _____ Date of Result: _____

26 II. Name of Court: _____

27 Type of Proceeding: _____

28 Grounds raised (Be brief but specific):

1 a. _____
 2 b. _____
 3 c. _____
 4 d. _____

5 Result: _____ Date of Result: _____

6 III. Name of Court: _____

7 Type of Proceeding: _____

8 Grounds raised (Be brief but specific):

9 a. _____
 10 b. _____
 11 c. _____
 12 d. _____

13 Result: _____ Date of Result: _____

14 IV. Name of Court: _____

15 Type of Proceeding: _____

16 Grounds raised (Be brief but specific):

17 a. _____
 18 b. _____
 19 c. _____
 20 d. _____

21 Result: _____ Date of Result: _____

22 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

23 Yes _____ No _____

24 Name and location of court: _____

25 **B. GROUNDS FOR RELIEF**

26 State briefly every reason that you believe you are being confined unlawfully. Give facts to
 27 support each claim. For example, what legal right or privilege were you denied? What happened?
 28 Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: "SEE Attached Petition"

6
7 Supporting Facts:

8
9
10
11 Claim Two: "See Attached Petition"

12
13 Supporting Facts:

14
15
16
17 Claim Three: "See Attached Petition"

18
19 Supporting Facts:

20
21
22
23 If any of these grounds was not previously presented to any other court, state briefly which
24 grounds were not presented and why:

1 List, by name and citation only, any cases that you think are close factually to yours so that they
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning
3 of these cases:

4
5 "SEE ATTACHED PETITION"
6

7 Do you have an attorney for this petition?

Yes _____ No X

8 If you do, give the name and address of your attorney:
9

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.
12

13 Executed on 2-5-08

14 Date



Signature of Petitioner

15
16
17
18
19
20 (Rev. 6/02)

Cody Rosbrugh *J-81708
Po. Box *7500 / D1-213+
Crescent City, CA. 95532
Pelican Bay State Prison, SHU
IN PRO PER

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Cody Rosbrugh
Plaintiff
v.
Robert A. HOBEL, et AL.,
Defendant(s)

CASE NO. _____
Petition for Writ of Habeas
Corpus; And Memorandum of
Points And Authorities.

INTRODUCTION

I

I, Cody Rosbrugh, (Plaintiff), am an inmate confined at Pelican Bay State Prison (P.B.S.P.); in The Security Housing Unit (SHU); Crescent City, California.

Plaintiff arrived at Pelican Bay State Prison on the 6th of August, in the year of 1998, to complete a determinate

(SHU) term of seven (7) years in segregation from High Desert State Prison; And furthermore, was given a consecutive determinate (SHU) term for something that wasn't even necessarily just, with a merd of the year 2010.

Petitioner was retained in segregation per classification action for, an indeterminate (SHU) term based solely on evidence that, and/or conduct, which was ruled insufficiently unusable, per Castillo v. Alameida, case no. C-94-2847-MJJ-JCS; And see also; California Department of Corrections And Rehabilitations, D.O.M. 861030.7 - 861030.10; Hence, Plaintiff had fruitfully been punished enough for.

Plaintiff had obtained a memorandum (dated; August 26th, 2002); IN RE; "... INDETERMINATE Security Housing Unit (SHU) status for Disruptive And/or suspected Prison Gang Membership And/or Association..."

In this memorandum, it stipulated that Pelican Bay State Prison (P.B.S.P.) officials And/or staff had a directive to not negate institution staff responsibilities, to identify "ANY" inmates [suspected] of Gang membership and/or Association; Whether or not, it is in fact correct. This said document was confiscated via a pod raid (search), but Plaintiff made a copy and has handwritten (verbatim), the entire document. (See; Attached Exh. "A", pgs. 1-3; dated August 26th, 2002).

PARTIES

II

- 1.) Cody Rosbrugh, (Plaintiff), A prisoner confined at Pelican Bay State Prison (PBSP); Security Housing Unit (SHU);
- 2.) Robert A. Horel, Warden at Pelican Bay State Prison (PBSP), responsible for operation, management, And Security of All inmates and staff;
- 3.) Scott Keenan, Acting Director of Institutions Division, responsible for oversight of [All] Institutions And Administrations, and/or Administrative Staff of Prisons;
- 4.) K. Brandon, facility Captain at Pelican Bay State Prison (PBSP), responsible for operation, management, And Security of facility; And also participates in the Classification process;
- 5.) D. Barneburg, Sergeant at Pelican Bay State Prison (PBSP), responsible for the screening of inmate(s) / Parolee Appeal form(s) at the second level of Appeals; And to investigate, question, And Verify facts, pertaining to inmate Appeals;

6.) T.S. Buchanan, Institutional Gang Investigator (I.G.I), And Correctional Officer (%), responsible for Any/All validation(s) to inmate(s), Housed at Pelican Bay State Prison (P BSP), Also responsible for the investigation(s), questioning, And verifying of Any and All facts, pertaining to Any inmates) validation;

7.) C. Countess, Institutional Gang Investigator (I.G.I), And Correctional Officer (%), responsible for Any/All validation(s) to inmate(s), Housed at Pelican Bay State Prison (P BSP), Also responsible for the investigation(s), questioning, And verifying of Any and All facts, pertaining to Any inmates) validation;

8.) J. A. McKinney, Correctional Lieutenant (Lt.), Institutional Gang Investigator (IGI) at Pelican Bay State Prison (P BSP), responsible for overseeing Any and All investigations, questioning, And verification's of All validation's upon inmates Housed at Pelican Bay State Prison (P BSP), Security Housing Unit (SHU).

9.) B. Thornton, Institutional Gang Investigator (IGI), And Correctional Officer (%), responsible for Any/All validation(s) to inmate(s), Housed at Pelican Bay State Prison (P BSP), Also responsible for the investigation(s), questioning, And verifying of Any and All facts, pertaining to Any inmates) validation;

107. C. E. WILBER, Correctional Counselor II (CCII), And inmate Appeals coordinator at Pelican Bay State Prison (PBSD), Security Housing Unit (SHU), responsible for the screening, filing, and log number assignments of inmate/Parolee Appeal forms (602), As well as the ensurance of "Due Process" of said inmate Appeals.

FACTS

III

Plaintiff Submitted a (COC-602) Inmate/Parolee Appeal form on July 12th, 2007, seeking relief through the prison's Administrative remedies. In this (602), Plaintiff stated that on July 9th, 2007, he received a "128-B" chrono (Gamer chrono), in which it stated that an Institutional Gamer Investigator (IGI), Correctional Officer (CO) C. Countess, conducted a cell search of an Inmate, and in the cell search, discovered an "address book", with Plaintiff's ailing grandmother's home address inside. Plaintiff's grandmother has been ailing for many years now; Furthermore, (CO) C. Countess confiscates said address book to create something out of nothing; And suggests that the address of Plaintiff's grandmother is [supposedly] being used for "third-party" correspondence, in which also is considered Gamer activity; And with no further evidence to support his

findings, is using this [supposed] information for Plaintiffs' validation.

Plaintiff objected to this absurdity, per Castillo v. Alameida, Settlement "... addresses cannot and will not be used as source documents..." (Castillo v. Alameida, case NO. C-94-2847-MJT-JCS); Section III; And ALL pertinent sections); Making this [supposed] 128-B chrono in-admissable as evidence, And should be stricken in its entirety from Plaintiffs' central file, under U.S. Constitution, XIVth Amendment; And VIIIth Amendment.

Furthermore, Pelican Bay State Prison (PESP) has in place, a "Red-Stamp", used to stop third-party communications by stamping [every] piece of "Out-Going" correspondence.

On July 18th, 2007, Plaintiff received his (602) Appeal form back, unresolved, and without an Administrative Appeals log Number. The appeals coordinator, a C.E. Wilbee, returned Plaintiffs' (602) Appeal, stating that Plaintiffs' appeal is an anticipated action at this point; 128-B chrono is simply staff observation as documented, and therefore not subject to Appeal, until such time as an action is taken; (See Attached Exhibit "B", pgs 1-11, dated July 18th, 2007.)

On July 19th, 2007, Plaintiff tried the formal level of review, and stated "... Dissatisfied," and requested this 128-B chrono be removed from his central file on the basis that it is

"Unfounded" and for the same reasons listed in part "A". On July 24th, 2007, Appeals Coordinator C.E. WILBER, sent back Plaintiffs' (602) Appeal, and with the same response as prior. (See; Attached ExH. "B", pg 5 of Plaintiffs' (602) appeal; dated both July 19th, and 24th, 2007).

On July 27th, 2007, Plaintiff submitted a second inmate/parolee (602) Appeal form against the Appeals Coordinator C.E. Wilber, on the grounds that he stated that Plaintiffs' (602) Appeal was not subject to Appeal; And an anticipated action. Both State and Federal Laws are clear in that inmates are, and will be allowed to Appeal [ANY] and [ALL] information concerning [ANY] inmates Validation Status; whether it be deemed, "... Staff observation, view point, etc.,); OR to it being an observation upon an 128-B form from (ICIT); Where with as long as it's printed on a "formal" document (such as a 128-B chrono), and put OR placed into [ANY] inmate(s) central file, it is automatically deemed subject to Appeal. (See; Attached ExH. "B", pg. 6; dated July 27th, 2007).

On July 31st, 2007, Appeals Coordinator C.E. Wilber returned Plaintiffs Appeal regarding the 128-B form ... "Granted"; C.E. Wilber stated that regarding the 128-B chrono (July 6th, 2007), it is appealable and has been assigned to the formal

level of review, per latest direction from the Inmate Appeals Branch. (See; Attached EXH. "B", pg 6; dated July 31st, 2007; log NO. 007-01668).

On August 6th, 2007, Plaintiff submitted another inmate/parolee (602) Appeal form; Based on the acts of an institutional Gang investigator (IGI), Correctional Officer (CO) T.S. Buchanan, He gave Plaintiff two (2) Confidential Information (1030) forms. The first was dated May 22nd, 2006, in which it stated that Plaintiff [supposedly] forwarded [supposed] information regarding Aryan Brotherhood politics.

The second one (CDC-1030 form), dated July 16th, 2004, stipulated that Plaintiff [supposedly] gave orders to other white inmates. Both (CDC-1030) forms not only are inadmissible as evidence in court, etc.; But de facto, call light upon the veracity and validity of the institutional Gang investigator(s) (IGI), and/or staff findings, or reports not only on Plaintiff, but to every other inmate whom has succumbed to this violation of both eighth and fourteenth Amendments, as well as the color of law. (See: Attached EXH. "C", pgs. 1-8; dated August 6th, 2007).

On August 28th, 2007, Plaintiff received his (602) appeal from C.E. Wilber, Appeals Coordinator; Stating that Plaintiff could not

Appeal these two (2) CDC-1030 forms, because O.B.S. has yet to take action on this information; Therefore "Screened out" / "rejected" Plaintiffs' (602) Appeal, thus barring Plaintiff, from proceeding further with Administrative remedies and/or seeking administrative relief. Under State / Federal laws governing said issues, C.E. Wilber is instilling not only prejudicial traits, but also retaliative actions on Plaintiffs' person. (see: Attached Exh. "C", pgs. 1-8; dated August 28th, 2007)

On August 29th, 2007, Plaintiff submitted an inmate / Parolee (602) Appeal form on C.E. Wilber, Appeals Coordinator here at Pelican Bay State Prison (P.B.S.P.) a second time, for his inept-ability to process Plaintiffs' (602) Appeal dated August 6th, 2007, for no other reason as to why except, that Plaintiff was "anticipating action" or "decision". Under State / Federal rules governing the regulations of said action; Plaintiff is in regulated rules to Appeal said (CDC-1030) forms for "... where with as long as it is put or established upon a formal document (such as a CDC-1030 form); And then placed onto [ANY] inmates Central file, it is automatically subject to Appeal. This is the second time Plaintiff has had to file a separate (602) Appeal form on C.E. Wilber's person for "Screening out" Plaintiffs' (602) Appeal form: (see; Attached Exh. "D", pgs. 1-3; dated August 29th, 2007); Also see; Attached Exh. "B", pg. 6; dated

July 27th, 2007), where to C.E. Wilber recanted his denial, and sent Plaintiff's (602) Appeal to Second level of review; By-passing formal level of review.

On September 4th, 2007, Plaintiff received a second level reviewer's response; To wit denied; And a Sergeant O. Baeneburg reviewed this matter, and determined that Plaintiff's Appeal [did not] meet the criteria set forth in California Code of Regulations (CCR) Title 15, Section § 3084.1; But, Sergeant O. Baeneburg is inadequately advised upon this provision set forth by (Castillo v. Alameda, case no. C-94-2847-MJJ-JCS);

On September 5th, 2007, Plaintiff received his (602) Appeal dated August 29th, 2007, with yet another denial from C.E. Wilber; Stating that Plaintiff absolutely had the right to dispute (Appeal) his in-Active review (COC-1030) forms, But to no avail, Plaintiff's Appeal is [supposedly] premature based on the O.D.M.; And/or (C.C.R) Title 15 § 3084, which "dictate" screening decisions; Thus barring Plaintiff to proceed with the administrative process and to seek administrative relief. (see; Attached Exh. "D", pg. 3; dated September 5th, 2007.)

On September 21st, 2007, Plaintiff resubmitted his (602) Appeal to the third level of review; Stating that he was dissatisfied

By the denial of Plaintiff's Second level of review, for this 128-B chrono is Supposition; and not based upon fact, but rather a story invented by (I.G.I.) C. Countess. This [does] adversely affect Plaintiff because, it is false accusations and/or information on my central file, and Plaintiff wants it removed. (I.G.I.) cannot just find [any] address, and make-up elaborate stories to keep inmate(s) in the Security Housing Unit(s), on [supposed] active Gang status. Second level of review did not make [ANY] such steps in order to investigate these inconclusive accusations that (I.G.I.) C. Countess made; and therefore [did not] complete their task in conducting a thorough inquiry into the matter at hand. (See; Attached ExH. "B"; pg. 2, Section "H"; dated September 21st, 2007).

On October 4th, 2007, Plaintiff filed an inmate/parolee (602) Appeal form in regards to two (2) Confidential Disclosure Forms (COE-128-B); Along with two (2) forms that appear to be Institutional Gang Investigator(s) (IGI) chronos, to be looked upon as "Investigative Documents". [ALL] above mentioned documents were signed by (IGI) Correctional Lieutenant (Lt.) J.A. McKinney; (I.G.I.) Correctional Officer T.S. Buchanan.

Now, in there [Artificial] investigation, (%) T.S. Buchanan tries to establish some sort of basis that Plaintiff [supposedly]

is an active Prison Gang member, and even goes to the lengths of outside elements to find a link with Plaintiff's name; Through local law enforcement; The Office of Correctional Safety; Parolee/Leads; And W.I.N.I. . ., to wit, he found out that Plaintiff not only [IS] in-active, but that none of these "agencies" even know Plaintiff exists. (See; Attached EXH. "E", pgs. 1-7; dated October 4th, 2007).

On October 9th, 2007, Plaintiff receives his (602) Appeal form back, with a (COC-1824) "Reasonable Modification or Accommodation Request form, from C.E. Wilbur, stating that Plaintiff's action and/or decision has not yet occurred; And that such issues are not appealable until they happen; according to State and Federal Courts, As long as said issue is put upon and established in a "formal document" (such as COC-1030; COC-128-B; etc.), and then placed into [ANY] inmate(s) Central file, it is automatically Subject to Appeal. (See; Attached EXH. "E", pg. 8; dated October 9th, 2007).

On October 12th, 2007, Plaintiff Submitted an inmate/Parolee (602) Appeal form, stating that on October 5th, 2007, Plaintiff received a (COC-128-B) chrono, stipulating that while conducting a cell search of an Inmate's House (Bentley "J-21514), on September 19th, 2007, (SGT) B. Thornton found a 1999 Calender with three

(3) names on different dates of the year, clearly depicting "Birthdays" of said mentioned; But nothing more. Furthermore, (IGT) B. Thornton's [opinion] is that this is a direct association between [supposed] validated inmates.

Plaintiff requested that this 128-B chrono be stricken from Plaintiff's Central file; And [ANY] other file associated with Plaintiff's, for it does not prove anything, least of all "Gang Association"; Furthermore, that (IGT) staff be retrained on what [IS], and what [IS NOT] Gang activity, Association; And that the Institutional Gang Investigator(s) (IGI), stop trying to pad files with [false] chronos.

On the same day, Plaintiff received his (602) appeal from C.E. Wilbee, whom stated that Plaintiff was attempting to appeal a (COC-128-B) information chrono of Staff's "observations" as they (staff) perceived it; And that Plaintiff could not do so. Per rules and regulations governing validation process, once an observation is [recommended], that action be taken based on their observation, it is no longer an observation. (See; Attached EXH. "F", pgs. 1-5, dated October 12th, 2007.)

On October 16th, 2007, Plaintiff wrote (CC#) C.E. Wilbee, Appeals Coordinator a letter, And sent it along with Plaintiff's (602) Appeal, dated October 12th, 2007, in hopes of gaining a log

number, and therefore processing Plaintiff's (602) Appeal.

On October 12th, 2007, Plaintiff received both his letter and (602) Appeal from C.E. Wirtbe, in which he stated the same as before, and without processing Plaintiff's (602) Appeal to the next level of review. (See; Attached EXH. "F", pgs 1-5; dated both October 12th and 16th, 2007).

On December 18th, 2007, Plaintiff received his third and final level of reviewer's response; Denied by N. Gramme, Chief Inmate Appeals Branch; in which was stated that the 128-B Chrono is fully consistent with existing regulations and Policy; And there is [NO] need to modify or remove the chrono from Plaintiff's Central file. N. Gramme further states, that further use of the chrono in a [supposed] gang validation is not subject to Appeal at this time; However, the Appellant can Appeal the use if and when it is used, to support such action. Third level Reviewer did not do [ANY] type of independent investigation into this matter other than re-state second level's findings. (See; Attached EXH. "B", pg. 11; dated December 18th, 2007).

Plaintiff now asserts that his retention in Segregation on an indeterminate (STU) term, based solely on insufficient, uncooperative, and incoherent investigative work by Pelican Bay State Prison Institutional Gang Investigator's violate Plaintiff's

Constitutional Rights Under Both State and Federal Law; Clauses of Due Process; Equal Protection, Double Jeopardy; And Liberty;

Plaintiff stipulates that the institution is clearly in violation of its own Rules and the Underground Policy in which it relies upon cannot be enforced without violating state and federal rights under its constitutional guarantees.

Plaintiff has exhausted [All] state remedies of this administration; And thus seeks relief in this Honorable Court.

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CONTENTION'S

IV

- I. THE ARBITRARY APPLICATION OF RULES USED TO RETAIN PLAINTIFF IN SEGREGATION VIOLATES THE "EQUAL PROTECTION CLAUSE", AND THE RELIANCE ON AN UNDERGROUND POLICY VIOLATES STATE REGULATIONS AND LAWS.
- II. THE EXTREME CONDITIONS, DEPREVATIONS, AND DURATION OF PLAINTIFF'S CONTINUED RETENTION IN SEGREGATION CONSTITUTES AN "ATYPICAL AND SIGNIFICANT HARDSHIP" WHICH TRIGGERS A PROTECTED LIBERTY INTEREST.
- III. THE INDETERMINATE SEGREGATION OF PLAINTIFF IN SHU, BASED ON A "PREDICTIVE" THEORY VIOLATES ALL BASIC PRINCIPLES OF DUE PROCESS.
- IV. THE CONTINUED CONFINEMENT OF PLAINTIFF IN SEGREGATION AFTER HIS EXPIRED DETERMINATE SHU-TERM BASED SOLELY ON SUPERFICIAL, UNCOBORATED AND/OR UNCONSTITUTIONAL INVESTIGATIVE PROCEDURES, WHICH PLAINTIFF

IS STILL BEING PUNISHED, VIOLATES THE
STATE AND FEDERAL PROTECTION'S AGAINST
DOUBLE JEOPARDY.

PRAYER FOR RELIEF

Plaintiff is without remedy save by writ
of HABEAS CORPUS;
Wherefore, Plaintiff Pray's the court;

- 1.) ISSUE a writ of Habeas Corpus;
- 2.) Order release of Plaintiff to General Population;
- 3.) Declare rights of Parties;
- 4.) Declare Plaintiff's claims to be true;
- 5.) Appoint counsel And Award reasonable Attorney fees;
- 6.) Grant any other, And further relief, the Court deem's
proper And just.

Dated; 2-5-08, 2008

Respectfully Submitted,
/s/ Cody Rosbrugh
Cody Rosbrugh / *J-81708
In Pro Dee

VERIFICATION

I, Cody Rosbrugh, *J-81708, State;

I am the Plaintiff in this action herein; I have read the foregoing Petition for writ of Habeas Corpus, And the facts stated therein are true of my knowledge, except as matters that are therein stated on my own information and belief, And as to be those matters I believe to be true.

I declare under Penalty of Perjury that, the foregoing is true and that this declaration was executed at Pelican Bay State Prison, Crescent City, California, in the County of Del Norte, on this 5TH day of FEBRUARY, in the year 2008.

Respectfully Submitted
 LSI Cody Rosbrugh
 Cody Rosbrugh / *J-81708

INI PRO PER

MEMORANDUM OF POINTS AND AUTHORITIESI

THE ARBITRARY APPLICATION OF RULES USED TO
 RETAIN PLAINTIFF IN SEGREGATION VIOLATES
 THE "EQUAL PROTECTION CLAUSE", AND THE RELIANCE
 ON AN UNDERGROUND POLICY VIOLATES STATE
REGULATIONS AND LAWS.

The continued segregation of Plaintiff on an indeterminate
 stay-term, based solely upon [supposed] documents such as
 "Confidential Information (COC-1030) forms"; 128-B chronos,
 are not only prejudicial towards Plaintiff, but are blatantly
 construed by Pelican Bay State Prison Officials to keep Plaintiff
 and/or inmates in general, from [supposedly] presenting
 a risk, which at most is "unpredictable" to the general
 population (GP), is illegal, immoral, and violates Plaintiff's
 State and Federal Constitutional rights.

Plaintiff entered the California Department of Corrections
 and Rehabilitation on October 19th, 1995, and has participated
 in educational programs; work programs; and religious programs
 while housed in General Population; Plaintiff has functioned and
 enjoyed these programs afforded to him in the General
 Population(s) in the California Prison System until his placement
 in Segregation on August 5th, 1998; It was only then, that

Plaintiff received other rule's violations, then as now. Plaintiff was held past his expired segregation STH-term, which during that time he received other [supposed] confidential information (COC-1030) from(s) and/or 128-B chrono's, that are being relied upon by the institution now, to retain Plaintiff in Segregation on an indeterminate STH-term, with no end in sight.

This retention in STH segregation of Plaintiff violates, the "EQUAL PROTECTION CLAUSE" of the Fourteenth (14th) Amendment, which is a federally protected right guaranteed by the Constitution of the United States; It requires states to treat similiary situated people alike, it prohibits a State from denying [ANY] person within it's Jurisdiction, the "EQUAL Protection" of the law.

"... THE 14th AMENDMENT'S EQUAL PROTECTION CLAUSE TO ANYONE, CITIZEN OR ALIEN, WHO IS SUBJECT TO LAWS OF A STATE... (PLYER V. DOE, 457 U.S. 702 (1982)).

"THE EQUAL PROTECTION CLAUSE" extend's to Prisoner(s) of the State as well, and to those laws, rules and regulations, issued by the State.

"THE touchstone of Due Process is protection of The Individual Against Arbitrary Action

Of Government..." (Dent v. West Virginia,
129 U.S. 114, 123 (1889)).⁴

Plaintiff asserts that institutional arbitrary retention and continued segregation beyond his expired determinate term based solely on [supposed] Confidential Information (CDC-1030) forms), and 128-B chronics), violates the "Equal Protection Clause."

The institution claims that Plaintiff posed an "unpredictable" risk to the General Population and Staff if he were to be released from SHU, (see; Attached EXHIBITS "A-F"); On this theory, the questions must be [what] constitutes an "unpredictable" risk, [what] class of inmates fall under that classification, [what] rule regulation, law, or guideline, lawfully govern that class of or status of inmate(s), and more importantly, [how] are they applied to all inmates(s) who fall under that theory or classifications.

1) Also see; CRUZ v. BETO, 405 U.S. 39 (1970); "Protection on Buddhist Practices when other religious practices were permitted violates Equal Protection"; MCGINNIS v. ROUSTER, 410 U.S. 263 (1973), "Different Procedures for awarding good time credit to jailed and non-jailed defendants"; Violated Equal Protection. Also; Farmer v. Carlson, 685 F.Supp. 1335 (M.D. Pa. 1988); Dolphin v. Mansum, 626 F.Supp. 229, 239 (D. Conn. 1986).

Plaintiff asserts there are no lawful procedures for such theories or classifications for inmates as in Plaintiff's circumstances. For rules and regulations pertaining to any such classification, the institution relied on an interpretation of California Code of Regulations, Title 15 § 3341.5(c), in part, by order of the Deputy Director of Institutions Division, (see Attached Exh. "A", pgs. 1-2; Dated August 26th, 2002).²¹

CCR, TITLE 15 § 3341.5(c): States in Part;
 (c) "... Security Housing Unit (SHU), An inmate whose conduct endangers the Safety and Security of Others or the Security of the institution, Shall be housed in "SHU".

Plaintiff asserts that this section does not alone govern an inmate(s) placement or retention in SHU-segregation, the section as a whole must be followed and administered. The institution can not, and should not rely on the Department Memorandum which is an underground Policy. This Memorandum states several illegal and unconstitutional Policies to order Warden(s), to place and retain inmates in segregation; It orders administrative staff to retain and place into

²¹ For full text of Title 15 § 3341.5(c), see Attached Exhibit "A", pgs. 1-2 (Duplication); dated August 26th, 2002, herein.

Segregation [AU] inmate(s) who are currently serving a determinate STA-term, regardless of whether the inmate is not eligible for additional determinate STA assessment. (See; Attached EXH. "A", pgs. 1-2; dated August 26th, 2002).

This memorandum further orders that inmate(s) that have been [supposedly] identified and processed as [supposed] inmate(s) of Prison Gang membership/association, or assessed [supposedly] by Confidential Informant (CDC 1030^{is}), or CDC-128-B chrono(s), shall be considered for indeterminate status.

The memorandum states ...,

"... This direction is appropriate and within the parameters of the California Code of Regulations, title 15, section § 3341.5(c)..." (see Attached EXH. "A", pgs. 1-2; dated August 26th, 2002).

However, as stated herein, the retention of inmate(s) and placement of inmate(s) in segregation for an indeterminate STA term [is not] within the parameters of CCR title 15, section § 3341.5(c), as applied in the instant, even more so when as here, the inmate has not done anything wrong; Has not violated [any] rule or received any new STA-term; All Plaintiff has done in this matter was, to complete his expired determinate STA-term.

The institution's reliance on this departmental Memorandum is wrong, [and] unlawful; It can not be enforced; "... Department of corrections could not rely on Amendment of regulation incorporating new rule to enforce another regulation, where the latter regulation was not adopted in accordance with the Administrative procedure act..." (see Faunce v. Denton, 213 CAL. Rptr. 122, 167 Cal. App. 3d. 191 (1985)).

The Administrative Procedure Act (A.P.A.) provides for Judicial review of Prison Officials actions, it has been established that Prison Classification Criteria must be promulgated constantly with state (A.P.A.); (Storcham v. Rushen, 156 Cal. App. 3d. 302, 203 Cal. Rptr. 20, 24-15 (1984)). A classification decision such as in the instant matter and the guidelines of Policy used in that decision, can and should be under the State (A.P.A.); (In RE Wilson, 202 Cal. App. 3d. 661, 249 Cal. Rptr. 36, 40-42 (1983)).

The underground Policy used by Classification Committee, to retain Plaintiff in Segregation violates the California Constitution which indicates that when officials discretion is limited by substantive criteria or procedures, Due Process requires that decisions actually be made based on these criterias, under the

California Constitution. Here, the institution looked outside of those criterias to unlawful means, and guidelines and applied them to Plaintiff;

"... freedom from Arbitrary Adjudication is a substantive element of one's liberty..." (People v. Ramirez, 25 CAL. 3d. 260, 158 CAL. Rptr. 316, 599 P. 2d. 622, 627 (CAL. 1979)).³¹

Plaintiff furthermore assert's that because the institution has failed to follow their own rules and regulations (D.O.M. 61020.7 - 61020.10), and relied upon an underground Policy, they are illegally retaining Plaintiff in Segregation.

Even if this court should deem that the institution has acted lawful, the court must find that the institution is in violation of Plaintiffs' rights to EQUAL PROTECTION of the law provided to him under the 14th Amendment, which requires the State to give similarly situated person's, or classes, similar treatment under the law.

31 Also see; Toussaint v. McCarthy, 801 F.2d. 1080, 1096 (9th Cir. 1986); Spears v. Thigpen, CIV. NO. 87-H-790-S (N.D. Ala. 1988); Gaul v. Wagner, CIV. NO. 87-6489 (E.O. Pa. 1988).

In the case of "Castillo v. Alameida JR, case NO. C-94-2847-MJT-JCS"; it stipulates that;

Paragraph #11, "... The policies and procedures discussed in and/or on paragraph's #12 thru #21 In fra correspond to the independent Source items" discussed in title 15 § 3378 (c)(8), ..."

Paragraph #15, "written material /communication; (title 15 § 3378 (c)(8)(c) and (i) ... Staff must have an articulable basis for [why] a written material or communication is reliable of Gang association or membership. Defendant(s) agree that Staff [must] articulate and record [why] a written material or communication [is] evidence of [supposed] Gang association or membership based on either the "explicit" or "coded" content of the communication, with respect to greeting cards, such as birthday cards, or get well cards; Staff must record an articulable basis for [why] the communication [is] of [supposed] Gang membership or association.

Plaintiff refers also to paragraph #19, of Castillo v. Alameida JR, upon the use of an address, [supposedly]

used for three (3) way communication; where Plaintiff's grandmother's address is found inside another inmate's address book, unrelated to any and all merits of violation;

Paragraph 19; "... Address book (CCR title is 83378(c)(8)(2)); Defendant(s) agree that Staff shall articulate basis for [why] the contents of an address book is/are evidence of GMA association/membership. This information shall be recorded by Staff and inmate(s) provided with written forms)..."

Clearly defendant(s), have not been following the rules and guidelines of Castillo v. Alameida Jr.; And the Court agreement and settlement, And therefore inmate(s) should not be housed in these limits for indeterminate terms [AND] even more so, as the instant where Plaintiff has not violated [ANY] rule. (See; Plaintiff's Attached EXH. "B", pgs. 1-11; Inmate 602 Appeal, dated July 17th, 2007; Also see; Castillo v. Alameida, case no. E-94-2847-MJJ-JCS.)

Even if this Court must deem that the institution has acted lawful, the Court [must] find that the institution is in violation of Plaintiff's right to EQUAL PROTECTION of the Law, provided to him under the 14th Amendment which, requires the state to give Similarly situated person(s) or

classes similar treatment under the law.

"... Equal Protection does not require that all persons be dealt with identically but it does require that a distinction may have some relevance to the purpose for which the classification is made..." (see: Baxstrom v. Herold, 383 U.S. 107, 111, 86 S. Ct. 710, 713 (1966)).

"... Equality is meaningless under unequal conditions"; (Morris v. Cohen, Reason and Law 101 (1961)).

"A number of distinct meanings are normally given to the provision that there should be equality before the law. One meaning is that equality before the law only connotes the equal subjection of [all] to a common system of law, whatever it's content... A second theory asserts that equality before the law basically a procedural concept, pertaining to the application and enforcement of law's [and], the operation of the legal system... A third meaning normally

borne by declarations that [All] are equal before the law; Perhaps no more than a variant of the second, is that State and individual before the law, should be equal..."; (see; Polyurus G. Polyuron ... "The EQUAL PROTECTION of the law's..." (1-2) 1980).

"[T]he equal protection principle is exclusively associated with written constitution's and embodies guarantees of equal treatment normally applied not [only] to the procedural enforcement of laws, but also to the substantive of their provisions. In other words, the equal protection of the law is normally and invariably treated as a substantive constitutional principle, which demands that laws will only be legitimate if they can be described as just and equal" (Polyurus G. Polyuron, "The EQUAL PROTECTION of the law, (#4) 1980)).

It is clearly a violation of Equal Protection on the

instant matter, as Plaintiff has set forth and as applied.
 Plaintiff should prevail on this claim!

II

THE EXTREME CONDITIONS, DEPRIVATIONS,
 AND DURATION OF PLAINTIFF'S CONTINUED
 RETENTION IN SEGREGATION CONSTITUTES
 AN "ATYPICAL AND SIGNIFICANT HARDSHIP"
 WHICH TRIGGERS A PROTECTED LIBERTIES
INTEREST.

In the instant, Plaintiff is confined to his cell for twenty-two and a half (22½) hours a day; He lives alone in his cell; TAKES all meals alone, in his cell; For one and a half (1½) hours a day, he is allowed out of his cell to WALK approximately thirty (30) feet down the tier from which his cell is located, to the empty exercise room; Plaintiff's [only] view of the outside, is straight up through the mesh top roof of the exercise room; His segregation in the Security Housing Unit (SHU), reduces human contact to an almost non-existent state; Plaintiff is not allowed to interact with other prisoner(s) or to participate in vocational, or employment

activities, nor is Plaintiff allowed to participate in [any] religious services, or exercise activities.

These severe conditions no doubt have an adverse psychological consequence;

"... it is well expected that conditions such as those present in (SHU) SMU II, can cause Psychological Decompositions to the point that individual(s) may become incompetent..." (Miller v. Stewart, 231 F.3d 1248, 1252 (9th Cir. 2000)).

Other courts have recognized that prison conditions remarkably similar to (SHU) can, adversely affect a person(s) mental health and well being, especially those whom are subjected to these types of conditions for a continuous amount of time; (Madrid v. Gomez, 889 F. Supp. at 1230.)⁴¹

41 For further effects of (SHU) conditions, see; McClary v. Kelley, 4 F. Supp. 2d 195, 208 (W.D. N.Y. 1998); Craig Haney and Mona Lynch regulating Prisons v. the future; A Psychological Analysis of SuperMax and Solitary Confinement, 23 NYU. REV. L. and Social Change 447 (1997).

A short stay under the severe conditions of (SHU) may not raise Due Process concerns,⁵¹ But in the instant, Plaintiff has been subjected to these conditions over thirteen (13) years and his stay in segregation has already exceeded [ANY] determinate time clause; And is thus forced, with an indeterminate stay, and has no realistic means of release from (SHU) Segregation; The only possible means of release for Plaintiff, out of segregation is left to the "feelings" or discretion of institutional staff, in determining that Plaintiff no longer possesses the potential of an [Alleged] unpredictable risk and/or threat. The reality for Plaintiff is that he is likely to remain in what amounts to Solitary Confinement for, the rest of his natural life.

The circumstances and duration of Plaintiff's continued confinement in (SHU) are clearly severe, and long enough to trigger a liberty interest; (See *ex. Colon v. Howard*, 215 F.3d. 227, 230-232 (2d. Cir. 2000); (Discussing cases and holding that

⁵¹ *Koch v. Lewis*, 216 F. Supp. 2d. at 1001, FN.*11; "... We do not rule out the possibility that certain stays in SMU II (SHU) will trigger liberty interests regardless of duration ..."; Also see: *Sealey*, 197 F.3d. at 586; "... Especially harsh conditions endured for a brief interval, and somewhat harsh conditions endured for a prolonged interval might both be 'Atypical' ..."

305-day confinement satisfied the "Sandley" standard; (SHOATS v. Horn, 713 F.3d 140, 143-44 (3d. cir. 2000) (Holding that segregation for eight (8) years triggered Due Process rights.)

These conditions in which Plaintiff is being subjected to illegally are, in contrast to those that Plaintiff would enjoy once more. If Plaintiff were to be released, he would have access to vocational training, work, religious and rehabilitative services, and recreational activities (such as team sports, Hand ball, Basketball, baseball, etc..)⁶¹; He would further be able to socialize with other inmate(s); And have better access to his family, and to be able to build and re-inforce that strong bond;⁷¹ Furthermore, Plaintiff would be allowed phone calls, to call his family.⁸¹

"... No hearing committee has ever conducted an individualized review of, the specific conduct of Plaintiff, relating to Security concerns..." In Toussant v. McCarthy, 711 F. Supp. 536 (N.D. Cal. 1989), the Ninth circuit stated that Annual reviews [does not] sufficiently protect the "Liberty Interest" of prisoner(s) held in Segregation."

-
- 6.) Pelican Bay State Prison (SPH) does not provide these programs to (SPH) inmates(s).
 - 7.) Pelican Bay State Prison is the farthest Prison North in California; And farthest from Plaintiff's Home and family.
 - 8.) Pelican Bay State Prison (SPH) does not allow inmates(s) Personal phone calls.

Furthermore, Plaintiff would be allowed contact visits with family and friends; These visits would become more of a reality for Plaintiff because he would be able to be housed in an institution, closer to home.⁹¹

The deprivation of Plaintiff involves a severe Liberty in which [ALL] are entitled to, under the Federal and State Constitutions;

".... Liberty is God's gift to humanity"; George W. Bush, President of The United States of America, State of the Union address (January 28th, 2003)....

The heart of the liberty deprivation is whether Plaintiff's indefinite placement in (SHU) constitutes, an "Atypical and Significant hardship", in relation to the ordinary incidents of prison life'. The Sandon test requires a case by case examination of both conditions of the inmate(s) confinement and the duration of the deprivation at issue: (SANDON, 515 U.S. at 486, 115 S.Ct. 2293; Keenan v. Hall, 83 F. 3d. 1083, 1089 (9th Cir. 1996), Amended by 135 F. 3d. 1388 (9th Cir. 1998);

⁹¹ Pelican Bay State Prison, (SHU), does not allow contact visits with [any] persons; Visits are through glass windows, speaking through a phone for approximately one (1) hour; The distance and time allowed to visit, as well as the income bracket of most Prisoner(s) families, deter family and friends from visiting.

Sealy v. Giltner, 197 F.3d. 578, 580 (2d Cir. 1999).

In Plaintiffs' case, the deprivation is extreme in both degree and duration. (SHU) imposes some of the most harsh, cruel, and draconian conditions that can be found in a modern American Prison (Madrid v. Gomez, 889 F. Supp. 1146, 1227-1230 (N.D. Cal. 1995)).

The frame work for analysis is straight forward: "Sandin" and its progeny established a two (2) part inquiry... First, determining whether Plaintiffs' indefinite detention in (SHU) implicates a Constitutional Protected Liberty interest, once that is established, we examine the procedural and evidentiary safeguards afforded to Plaintiff, in order to decide whether there has been a deprivation of due process. (Sandin v. Conner, 515 U.S. 472, 115 S.Ct. 2293, 132 L.Ed. 2d. 418 (1995); Zimmer Lee v. Keeney, 831 F.2d. 183, 186 (9th Cir. 1987), cert. denied, 487 U.S. 1207, 108 S.Ct. 2851, 101 L.Ed. 2d. 888 (1988); Madrid v. Gomez, 889, F. Supp. 1146, 1270 (N.D. Cal. 1995))¹⁰¹

The "Sandin" decision worked a fundamental change in

¹⁰¹ Also see; Mims v. Shapp, 744 F.2d. 946 (3d. Cir. 1984); Staley v. Dugger, 833 F.2d. 1420 (11th Cir. 1987); Perez v. Newbert, 611 F. Supp. 830 (D.N.J. 1985); Fremer v. Carlson, 685 F. Supp. 1335 (M.D. Pa. 1988).

→ determine whether an inmate possesses a
protected liberty interest specifically "Sandin"
umbrella / Permissive analysis of Hewitt v.
921-77 103 S.Ct. 864, 74 L.Ed. 2d 625

on the nature of
575 U.S. at 481, 115

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the way the courts determine whether an inmate possesses a constitutional protected liberty interest, specifically, "Sandin" abandoned the mandatory/permissive analysis of Hewitt v. Helms, 459 U.S. 460, 91-73, 103 S.Ct. 864, 74 L.Ed. 2d. 675 (1983). In favor of an inquiry focusing on the nature of deprivation suffered by the inmate (Sandin, 515 U.S. at 481, 115 S.Ct. 2293). "Sandin ... refused the test for determining the existence of a liberty interest away from the wording of prison's regulations and towards an examination of the hardships caused by the prison's challenged action relative to "the basic conditions of life as a prisoner." (Mitchell v. Rupak, 75 F.3d. 517, 522 (9th Cir. 1996)).

Thus, after "Sandin", a state-created liberty interest arises when the prison's conduct toward the inmate(s) imposes an "Atypical and Significant Hardship on the inmate in retaliation to the ordinary incidents of prison life." (Sandin, 515 U.S. at 484, 115 S.Ct. 2293)

III In addition to state-created rights, the due process clause can give rise to a liberty interest of its own force. (Sandin, 515 U.S. at 484, 115 S.Ct. 2293). This protection generally is reserved for the "most severe deprivations of liberty, those exceeding sanctions in an unregulated manner."

Plaintiff has well established that his indeterminate confinement in (SHU) is "Atypical and Significant", And that his retention has exceeded [ANY] Sentence, in an unexpected manner and may well qualify as the sort of extreme deprivation that would give rise to a liberty interest from the Due Process Clause itself; (Koch v. Lewis, 216 F. Supp. 2d 999, F.w. 6; 1002-1003). Plaintiff must prevail on this claim.

III

THE INDETERMINATE SEGREGATION OF
PLAINTIFF IN (SHU), BASED ON A "PREDICTIVE"
THEORY, VIOLATES ALL BASIC PRINCIPLES OF
DUE PROCESS.

Under the severe conditions Plaintiff has asserted herein, other Courts have found that this type of deprivation is severe enough to engage the due process clause (Koch v. Lewis, 216 F. Supp. 2d. 1002-1003) ⁽²¹⁾

The Due Process clause of the 14th Amendment provides

(21) the constitutional Provision that prohibits the government from unfairly or arbitrarily depriving a person of life, liberty, or property.

inmate(s) with two (2) types of safeguards; The first is procedural protections. Generally, adequate notice, an opportunity to be heard, and periodic review; (Wolf v. McDonnell, 418 U.S. 539-70, 94 S. Ct. 2963, 41 L. Ed. 2d. 935 (1974); Toussaint v. McCarthy, 801 F. 2d. 1080, 1100 (9th Cir. 1986), cert. denied, 481 U.S. 1069, 107 S. Ct. 2462, 95 L. Ed. 2d. 871 (1987)). The Second type of Safeguard consist of evidentiary protections. Prison officials can not deprive an inmate of a Constitutional Protected liberty interest absent a sufficient evidentiary basis. The Supreme Court has held that, at the very least, there must be "some evidence in the record", supporting the decision to segregate an inmate; (Superintendent v. Hill, 472 U.S. 445, 454, 105 S. Ct. 2768, 86 L. Ed. 2d. 356 (1985)); The evidence relied upon must have "some indicia of reliability"; (Cato v. Ruston, 824 F. 2d. 703, 705 (9th Cir. 1987)), these evidentiary protections operate "To prevent arbitrary deprivations without imposing undue administrative burdens"; (Hill, 472 U.S. at 445, 105 S. Ct. 2768).

In the instant matter, there are no clear guidelines as to what Due Process or procedures an inmate placed or retained in (SPW) Segregation, for an indeterminate term based solely on Confidential Information (COE-1030) forms; And 128-B Chronos, surmised only, on part of Pelican Bay State Prison staff placating the institutions non-existent rules, which in fact

were clearly outlined, and Federally articulated in the Castillo v. Alameida JR, case no. C-94-2847-MJS-JCS, Settlement agreement.

Under the two (2) protections of Due Process mentioned, Procedural and evidentiary, "Neither Apply", nor are they sufficient in the instant, or those instances as herein. Plaintiff had once already been put into jeopardy for [supposed] past conduct, and is now being twice put into jeopardy on the same [supposed] information, that can not, and/or no longer be admissible, per Castillo v. Alameida JR, case no. C-94-2847-MJS-JCS Settlement agreement, both procedural and evidentiary due process are useless to the instant and circumstances of Plaintiff's retention in (SIU) segregation on the part of [supposed] Gang Affiliation, even if applied to the instant, they would provide no protections, relief, or prevent arbitrary deprivations; Plaintiff can not fairly or adequately provide a defense, provide mitigating circumstances or defend himself against the "predictive theories", or "Possibilities", that the prison has used to justify Plaintiff's continued retention in (SIU) segregation for an indeterminate term.⁽³¹⁾ This is a violation of his due process; (see

⁽³¹⁾ [A]ttempting to use predictive criteria based on subjective information has led "Historically to unsatisfactory and possibly indefensible results"; "Segregation should be based solely on actual behavior"; (A re-examination of Procedural Protections and a proposal for greater Procedural Requirements, 83 CAL. L. REV. 1115, 1138-46 (1995); Supremax Prisons; An Overview and General Considerations, U.S. Dep. of Justice, National Inst. of Corrections (January, 1999).

: Attached Exhibits "A-F").

The nature of the deprivation is the Paramount consideration in the Due Process analysis, critically relevant at both the Liberty and Process stages of the inquiry. "Sandin" was an attempt to return to basic Due Process principles which stress proportionality, and a balancing of the interest, involved more process, is due where the deprivation is greatest"; (Kuch, 96 F. Supp. 2d. at 964-65 (footnote admitted)). This is in keeping with "Sandin", and return to the principles of "Wolff", and its intricate balancing of Prison Management concerns with Prisoner's Liberty in determining the account of due process"; (Hill, 472 U.S. at 454, 105 S.Ct. 2768 ("the requirements of due process are flexible and depend on a balancing of the interests affected by the relevant government action").

As Plaintiff has set forth, his indefinite and likely permanent confinement, in solitary confinement (SHU), is one of the most severe deprivations of Liberty that, can be inflicted upon an inmate within the department of Corrections, if not the most severe. Given the extreme nature of deprivation in the instant matter, there is a clear violation of Plaintiff's Liberty interest, Due Process, and other constitutional guarantees stated herein. Those violations become much more severe in the instant where Plaintiff has done nothing wrong, broken no prison rules; And his placement in (SHU) for an indeterminate is not based on actual conduct, but rather unmitigated harshness

of Pelican Bay State Prison Staff, whom only want to meet there "Quota"; And without making the truth apparent. This type of indeterminate Segregation endured and inflicted upon Plaintiff, requires more than a feeling, hunch, or "Predictive theory".

Due Process is a flexible concept that balances the need to avoid arbitrary deprivations of liberty against the interest of differential Prison administration. (Hill, 472 U.S. at 454-55, 105 S.Ct. 2768). Here, Plaintiff is enduring and will continue to endure an extreme form of liberty deprivation, the Federal Protected Due Process Clause requires more than just a "predictive theory" in which the institution justifies the continued Segregation of Plaintiff, thus, offending the Due Process clause. Plaintiff must prevail in this claim.

IV

THE CONTINUED CONFINEMENT OF PLAINTIFF
IN SEGREGATION ON AN INDETERMINANT
SHU-TERM BASED SOLEY ON [SUPPOSED]
GANG INFORMATION, FRIVOLOUS AND/OR
PREDICTIVE THEORIES VIOLATES THE
STATE AND FEDERAL PROTECTION'S AGAINST
DOUBLE JEOPARDY.

AS ASSERTED HEREIN, Plaintiff is being retained in Segregation

for an indeterminate term based solely on his [supposed] gang affiliation in which, is nothing more but "hearsay" information that can not be proven in a court of law; for this institution's punishing Plaintiff on insufficient evidence, relied upon by information that can no longer be used and/or held against inmate(s) (per: Castillo v. Alameida SR, case no. C-94-2847-MST-JCS -; (settlement agreement)).

The institution is using [supposed] prior information as aggravating circumstances to, prolong Plaintiff's indeterminate SMI-term or in that nature. In fact, the institution is using Plaintiff's past information [supposed], combined as an actual violation of some underground policy which does not comport with the Administrative Procedure Act.

Plaintiff's [supposed] prior information used against him to [supposedly] validate him may be only used for a somewhat reference, if need be; if its repetitive, the repetitive rationale has long provided a basis upon which to uphold recidivist sentences schemes against Double Jeopardy challenges; It is not, however, simply a wild card that renders [Any] penalty constitutional, however severe its term's and however minor the principle. Rather, given the structures of the Double Jeopardy Clause, recidivism may only be considered in the condulatory phase of the extent that it serves to aggravate the principle information. Thus, this rule has been established for more than

a century; (More v. Missouri, 159 U.S. 473, 477 (1895), And it has been reiterated in the Supreme Court's contemporary Jurisprudence concerning gross disproportionality challenges; (see: Solem v. Helm, 463 U.S. 277, 296, and 31 (1983)).

A recidivism enhancement cannot be treated as an independent source, or an element of the information without running afoul of the Double Jeopardy Clause; (see: Almendarez Torres v. U.S., 523 U.S. 224, 247 (1998)).

The Double Jeopardy Clause of the Fifth (5th) Amendment of the United States Constitution, States;

"... nor shall any person be subject for the same offense / informational source to be twice put in Jeopardy of life or limb."

Thus, protecting [ALL] persons from being tried or punished for the same issue twice. The Double Jeopardy Clause was defined by the Supreme Court as three (3) separate Constitutional protections;

"... It protects against a second prosecution for the same offense after acquittal; It protects against a second prosecution for the same offense after either a conviction or substantial evidence; And it protects against multiple

punishment for the same issue..." (North Carolina v. Pearce, 395 U.S. 711 (1969)).

The fifth amendment's bar to Double Jeopardy is applied to states in their proceedings by virtue of the fourteenth amendment; (Benton v. Maryland, 395 U.S. 784, 795, 796, 89 S.Ct. 2056, 23 L. Ed. 2d. 707; Richard M. v. Superior Court, 4 Cal. 3d. 370, 375, 93 Cal. Rptr 752, 482 P. 2d. 664.) Article I, Section 13 of the California Constitution contains almost precisely the same guarantee against Double Jeopardy in that it provides;

"... No person shall be twice put in Jeopardy for the same offense..." (Gomez v. Superior Court, 50 Cal. 2d. 640, 649, 398 P. 2d. 976, 978.)

California by statute has, further expanded upon the protectional guarantee by the Federal and State Constitutions as follows;

California Penal Code § 687 provides;^[3]

".... No person shall be subjected to a

[3] All Penal Codes herein are California Penal Code (CPC).

second prosecution for a public [or institutional] offense for which he has once been prosecuted and convicted or acquitted..."

Penal Code § 1023 provides;

".... When the defendant is convicted or acquitted, or has once been in Jeopardy upon an accusatory pleading, the conviction, acquittal, or Jeopardy is a bar to another prosecution for the offense charged in such accusatory pleading..."

Penal code § 654 provides

".... An act or omission which is made punishable in different ways, by different provisions of this code, may be punished under either of such provisions; but in no case can it be punished under more than one; An acquittal or conviction and sentence

Under either one bars a prosecution
for the same act or omission under
[Any] others..."

The purpose of the Double Jeopardy defense is to prevent repeated harassment of the defendant upon a charge or allegation of the same offense; (Byan v. Superior Court, for cal. 3d. 575, 581, 102 cal. Rptr. 831, 498 P. 2d. 1079; U.S. v. Dixon (1993) 509 U.S. 688, 125 L. Ed. 2d. 556, 113 S.Ct. 2849; U.S. v. Brooklier (9th Cir. 1981) 637 F. 2d. 620); The fundamental nature of the guarantee against Double Jeopardy can hardly be doubted, its origins can be traced back to Greek and Roman times; It became established in the law of England before this Nations Independence.¹⁴¹

As with many other elements of the law, it was carried into the Jurisprudence of this Country through the medium of Blackstone, who codified the doctrine in his commentaries;

"... [T]he plea of autrefois acquit, or a former acquittal", He wrote "... IS grounded on this universe maxim of the Common Law of England, that no man

¹⁴¹ J. Singler, Double Jeopardy 1-37 (1969); see: Bartkus v. Illinois, 359 U.S. 121, 151-155, 79 S.Ct. 676, 697, 3 L. Ed. 2d. 684 (1959),

is to be brought into Jeopardy of his life more than once for the same offense..."

(4 W. Blackstone, Commentaries + 335.)

The indeterminate STH segregation sentence at issue is the most severe punishment and deprivation implemented by California Department of Corrections And Rehabilitations, and is exacerbated by the fact that Plaintiff did not commit [ANY] new rules violations or acts of misconduct. Plaintiff's [supposed] prior activity can not justify the extreme punishment now inflicted upon his person without breaching the boundaries imposed by the Double Jeopardy Clause, And other Constitutional guarantees.

Today, every state incorporates some form of the prohibition in it's Constitution or common law; This prohibition represents a fundamental ideal in our constitutional Heritage.

Thus, the validity of Plaintiff's indeterminate segregation in (STH), must be judged by the court's interpretation of the fifth amendments Double Jeopardy provisions applicable to the States through the fourteenth amendment and this states own provisions.

It is clear that, Plaintiff's illegal indeterminate segregation in (STH), should not stand once Federal and State Double Jeopardy standards are applied, and Plaintiff should prevail on this claim.

Conclusion

For the above stated reasons, this court should conduct a review of the legality of Plaintiff's indeterminate Segregation and determine Plaintiff's assertions herein; And find that Plaintiff's Judicial questions are valid. Therefore, the relief sought in this Petition, should be granted.

Dated: 2-5-08, 2008

Respectfully Submitted
/s/ Cody Rosbrugh
Cody Rosbrugh / J-81708

IN PRO PER

EXHIBITS "A-F"

EXHIBIT "A"

Memorandum

Date: August 26th, 2002

TO: Warden's

Classification's and Parole Representatives

Classification Staff Representatives

Correctional Counselor III's / Reception Centers

Subject: INDETERMINATE SECURITY HOUSING UNIT STATUS for
DISRUPTIVE INMATE(S)

The purpose for this memorandum is to provide institutional staff with direction relevant to the review and program consideration of inmates who complete a determinate Security Housing Unit (SHU) term and continue to pose a threat to the safety of others, or security of the institution. This perceived threat may be based on the inmates behavior while in SHU housing or due to the inmates disciplinary history while housed on the CDC. Due to escalating violence occurring within the institutions, Administrative Staff encouraged to review for appropriate housing those inmates who have a history of participating in disruptive behavior, or fomenting violence and unrest.

This direction is appropriate and within the parameters of the California Code of Regulations (CCR), title 15, section 83341.5(c), which states, "An inmate whose conduct endangers the safety of others or the security of the institution shall be housed in a SHU."

Effective immediately, during the pre-minimum eligible release date review, Classification Staff shall consider indeterminate (SAU) status for inmate(s) whom have demonstrated the desire to be disruptive and endanger the safety of others or the security of the institution. The following are examples of inmate(s) who may qualify for consideration of indeterminate (SAU) status;

1.) Inmate(s) currently serving a determinate SAU term whose in-custody behavior reflects a propensity towards disruptive conduct, regardless of whether the inmate is not eligible for additional determinate (SAU) term assessment.

2.) Specifically, inmate(s) who have been assessed three (3) determinate (SAU) terms for any offense or assessed two (2) determinate (SAU) terms for participating in a riot, melee, or disturbance. This requirement shall be subject to All SAU terms assessed on the same prison identification number indifferent to the inmate(s) term status; e.g., "P.U.R.T.C.", "P.U.W.N.T.", etc...

Wardens

Classification and Parole Representatives

Classification Staff Representatives

Correctional Counselor III's / Reception Center(s)

Page #2

This directive does not negate institution staff's responsibility to properly identify and process inmate(s) suspected of prison gang membership or association.

If you have any questions or require additional information, please contact "Marilyn Kalvelage", chief, institution Operations, Institutions Division, at (916) 323-4108; Or for technical information, contact "Linda Rianda", chief, Classification Services Unit, at (916) 322-2544.

W.A. Duncan
Deputy Director
INSTITUTIONS DIVISION

CC: Edward S. Alameida Jr.	Yvette M. Page
David Trstan	Karl Kerkseick
Michael T. Pickett	Linda Rianda
E. ROE	Ernest C. Van Sant
Anna Ramirez-Palmer	R. Manuel
K.W. Prunty	Gloria Rea
Judy Buckham	Carlos Sanchez
Wendy Sku	Paul Bestolarides
Gregory W. Harding	Ombudsmans office (7)

CC: Jane Sale
Merrie M. Koshell
Jim L'ETOILE
E.A. Mitchell
Patrick Q. Hickman

EXHIBIT "B"

EXHIBIT "B"

PELICAN BAY STATE PRISON

INMATE/PAROLEE
SECURITY HOUSING UNIT
APPEAL FORM

CDC 602 (12/87)

UNIT D-1

Location: Institution/Parole Region

1. PBSP

Log No.

1. D07-01668

Category

128-B
(6/10)

You may appeal any policy, action or decision which has a significant adverse affect upon you. With the exception of Serious CDC 115s, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeals Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

NAME	NUMBER	ASSIGNMENT	UNIT/ROOM NUMBER
ROS BRUNN	J-81708		D-1-213

A. Describe Problem:

ON MAY 9, 07 I RECEIVED A "128-B GAMB CHRONO" IN WHICH IT STATED THAT ON MAY 3, 07 IGT CID C. CANTRESS CONDUCTED A CELL SEARCH OF TIM HERRING ("K-08284") AND IN SEARCHING THIS CELL DISCOVERED AN ADDRESS IN HIS (HERRING'S) PHONE BOOK. THIS "PHONE BOOK" HAD THE HOME ADDRESS OF MY GRANDMOTHER WHO IS DYING OF BONE CANCER AND HAS BEEN SICKLY ILL FOR SEVERAL YEARS. CID CANTRESS TOOK THE FINDINGS OF THIS ADDRESS AND CREAMS SOMETHING OUT OF NOTHING. SUGGESTING THAT THIS ADDRESS IS FOR "SUSPECTED" THIRD PARTY.

If you need more space, attach one additional sheet.

B. Action Requested:

FOR THIS 128-B TO BE STRICKEN FROM MY CENTRAL FILE AND NOT USED AGAINST ME AS A SOURCE DOCUMENT NOW, NOR IN THE FUTURE, AND FOR THE RULES AND REGULATIONS BE KNOWN & ENFORCED BY ALL WHO USE THEM.

Inmate/Parolee Signature:

Caly Ros

Date Submitted:

7-12-07

C. INFORMAL LEVEL (Date Received: _____)

Staff Response: _____

BYPASS

Staff Signature: _____

Date Returned to _____

RECEIVED
SEP 26 2007
INMATE APPEALS
BRANCH

D. FORMAL LEVEL

If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigator's Report, Classification chrono, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.

I AM DISSATISFIED AND REQUEST THIS 128-B BE REMOVED FROM MY FILE ON THE BASIS THAT IT IS UNFUNDAMENTAL AND ~~UNRELIABLE~~ FOR THE REASONS LISTED ABOVE.

BYPASS

Signature: _____

Caly Ros

Date Submitted:

7-19-07

Note: Property/Funds appeals must be accompanied by a completed

CDC Appeal Number: _____

Board of Control form BC-1E, Inmate Claim

JUL 17 2007 JUL 20 2007

10

10

1002-08-7AP

JUL 30 2007

2ND IGT

(PER JAB)

(1) EXHIBIT "B"

First Level ☐ Granted ☐ P. Granted ☐ Denied ☐ Other

E. REVIEWER'S ACTION (Complete within 15 working days): Date assigned: _____

Due Date: _____

Interviewed by: _____

BYPASS

Staff Signature: _____

Title: _____

Date Completed: _____

Division Head Approved: _____

Signature: _____

Title: _____

Returned: _____

Date to Inmate: _____

F. If dissatisfied, explain reasons for requesting a Second-Level Review, and submit to Institution or Parole Region Appeals Coordinator within 15 days of receipt of response.

BYPASS

Signature: _____

Date Submitted: _____

Second Level ☐ Granted ☐ P. Granted ☒ Denied ☐ OtherG. REVIEWER'S ACTION (Complete within 10 working days): Date assigned: 7/30/07Due Date: 9/11/07☐ See Attached Letter

Signature: _____

K. Brandon Cpt.Date Completed: 8/11/2007

Warden/Superintendent Signature: _____

Date Returned to Inmate: 9-12-07

H. If dissatisfied, add data or reasons for requesting a Director's Level Review, and submit by mail to the third level within 15 days of receipt of response.

DISSATISFIED. THIS '12815' IS SUPPOSITION NOT BASED ON FACT BUT POTENTIAL
STORY INVENTED BY IGT I DO CONFESS. THIS DOES ADVERSELY AFFECT ME BECAUSE IT
IS FALSE INFORMATION IN MY FILE AND I WANT IT REMOVED. THE FURTHER DISSATIS-
FIAS BASED ON CALORIES STATED IN 'A' OF APPEAL. IGT OFFICERS CANNOT FIND
IN ADDRESS AND MAKE UP ELABORATE STORIES TO KEEP INMATES IN SLOW AND
ACTING CALM STATUS. WHICH IS THE PROOF OF 3 WAY MAIL. THERE IS NOVA IN THIS
IS FALSE INFO WITH THE SOLE PURPOSE OF HARMING USED AGAINST ME NOW IN THE FUTURE

Signature: _____

Date Submitted: 9-21-07

For the Director's Review, submit all documents to: Director of Corrections
 P.O. Box 942883
 Sacramento, CA 94283-0001
 Attn: Chief, Inmate Appeals

DIRECTOR'S ACTION: ☐ Granted ☐ P. Granted ☒ Denied ☐ Other☒ See Attached Letter

CDC 602 (12/87)

Date: DEC 18 2007

@ exb8

EXH. B"

CONTINUED A. STATEMENT OF FACTS.

MAIL DROP, GANG ACTIVITY" AND A "DIRECT LINK." WITH NO EVIDENCE TO SUPPORT HIS/HER CLAIM OF "SUPPOSED" GANG ACTIVITY, ASSOCIATION, SUCH AS "THIRD PARTY LETTERS AND COMMUNICATIONS"

CLO C. CANNOT THEN SUGGEST SIMPLY ON THE BASIS OF FINDING THIS ADDRESS (NO COMMUNICATION NOR PROOF AT ALL OF ASSOCIATION NOR GANG ACTIVITY) THAT IT SHOULD BE USED AS A SOURCE DOCUMENT FOR BOTH MY VALIDATION AS WELL AS THE HARRING.

ACCORDING TO THE FACTS.

- (A) LINDER CASTILLO V. GOMEZ / CASTILLO V. ALAMIDA. SETTLEMENT, (ADDRESSES IN PHONE BOOKS OF INDIVIDUALS 'SUPPOSEDLY' GANG MEMBERS OR ASSOCIATES CANNOT BE USED FOR VALIDATION, NOR BIRTHDAYS CARDS, LETTERS ETC) AS THEY DO NOT DEMONSTRATE SPECIFIC ACTS, DATES, TIMES OF ~~THE~~ ALLEGED GANG ACTIVITY.
- (B) THERE IS 3378 (C) STATES THAT ANY SOURCE ITEMS BE DISCLOSED TO INMATE. WHICH THE "128-B" WAS GIVEN, ALTHOUGH LINDER IN-VALID CIRCUMSTANCES. AND IS BEING INAPPROPRIATELY USED.
- (C) THERE IS NO PROOF THIS ADDRESS IS BEING USED FOR 3RD PARTY MAIL DROP. NOR PROOF OF ANY COMMUNICATION PERIOD.
- (D) THIS ADDRESS IS THE HOME ADDRESS OF MY DYING GRANDMOTHER. WHO NEVER HAD NOR WOULD PARTICIPATE IN SUPPOSED THIRD PARTY MAIL
- (E) PER CASTILLO SETTLEMENT "ADDRESSES" CANNOT AND WILL NOT BE USED AS SOURCE DOCUMENTS IN THAT THEY DO NOT DEMONSTRATE SPECIFIC ACTS, DATES, TIMES, PLACES OF ALLEGED GANG ACTIVITY, SUCH AS "THIRD PARTY LETTERS, AND OR COMMUNICATIONS." THEREFORE MAKING THIS 128-B IN-ADMISSABLE AS EVIDENCE. AND ~~BE~~ SHOULD

INMATE/PAROLEE APPEALS SCREENING FORM

Name: ROSBRYGH Number: J81708 Housing: D1 213

YOUR APPEAL IS BEING REJECTED/CANCELLED AND RETURNED FOR THE FOLLOWING:

Screening Appeals Rejection Criteria:

- ☐ 1. The resolution is not within CDC's jurisdiction. See CCR, Title 15, Sections 3084.2(e) and 3084.3(c)(1).
- ☐ 2. The appeal duplicates the inmates previous appeal. See CCR, Title 15, Section 3084.3(c)(2).
- ☐ (a) Your appeal has been screened out on _____ for _____
- ☐ (b) Your appeal is being reviewed at the _____ Level, Log # _____
- ☐ (c) Your appeal has been completed at the _____ Level, Log # _____
- ☒ 3. The appeal concerns an anticipated action or decision. See CCR, Title 15, Section 3084.3(c)(3).
- ☐ 6. The appeal exceeds the 15 working days time limit, and the inmate has failed to offer a credible explanation as to why he could/did not submit the appeal within the time limit. See CCR, Title 15, Sections 3084.2(e), 3084.3(c)(6), and 3084.4(e).
- ☐ 8. Abuse of the Appeal Process/Right to Appeal.
- ☐ (a) Excessive filings. Submission of more than one non-emergency appeal within a seven-calendar-day period is excessive. See CCR, Title 15, Section 3084.4(a).
- ☐ (b) Inappropriate statements. The Appeal contains false information, profanity, or obscene language. The appeal is rejected. See CCR, Title 15, Section 3084.4(b).
- ☐ (c) Excessive verbiage. Appeal cannot be understood or is obscured by pointless verbiage or voluminous, unrelated documentation. See CCR, Title 15, Section 3084.4(c).
- ☐ (1) Only allowed 1 added page, front and back, to describe the problem and action requested in Sections A and B, per CCR, Title 15, Section 3084.2(a)(1).
- ☐ (2) Only supporting documentation necessary to clarify appeal shall be attached to the appeal, per CCR, Title 15, Section 3084.2(a)(2).
- ☐ (d) Lack of cooperation. Appellant refused to cooperate and/or interview with the reviewer which has resulted in cancellation of the appeal, per CCR, Title 15, Section 3084.4(d).
- ☐ (1) Your appeal was screened out and returned to you with instructions: _____
- ☐ (e) Failed to reasonably demonstrate the decision, action, policy, or condition as having an adverse affect upon the inmate's welfare, per CCR, Title 15, Section 3084.1(a).
- ☐ (f) This is a request for information. It is not an appeal. Write a note (GA-22, Request For Interview form or CDC-7362, Medical Request form).

☐ 9. Cannot appeal on behalf of another inmate/person. See CCR, Title 15, Sections 3084.2(d) and 3084.3(c)(7).☐ 10. Issue resolved at previous level of Appeal review. See CCR, Title 15, Sections 3084.3(c)(8) and 3084.4(d).Comments: YOUR APPEAL IS AN ANTICIPATED ACTION AT THIS POINT. 128-B IS SIMPLY STAFF OBSERVATIONS AS DOCUMENTED AND NOT SUBJECT TO APPEAL UNTIL SUCH TIME AS AN ACTION IS TAKEN.

JUL 18 2007

Date JUL 24 2007

C. E. WILBER
Appeals CoordinatorPELICAN BAY STATE PRISON
SECURITY HOUSING UNIT
UNIT D-1This screening decision may not be appealed unless you can support an argument that the above is inaccurate.
In such a case, please return this form to the Appeals Office with the necessary supporting information.

PERMANENT APPEAL ATTACHMENT - DO NOT REMOVE

PBSP

(Rev. 11/06)

CCR 3084.3(d)

PBSP

JUL 17 2007

JUL 20 2007

5

Reviewed
UPHELD
7-20-07

**INMATE/PAROLEE
APPEAL FORM**
 CDC 602 (12/87)

Location: Institution/Parole Region

PBSP

 PELICAN BAY STATE PRISON
 SECURITY HOUSING UNIT

2. _____

2. _____

UNIT D-1

You may appeal any policy, action or decision which has a significant adverse affect upon you. With the exception of Serious CDC 115s, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeals Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

NAME	NUMBER	ASSIGNMENT	UNIT/ROOM NUMBER
Rosbrugh	J-81708		D-1-213

A. Describe Problem: ON JULY 18TH 2007 I RECEIVED MY INMATE APPEAL FORM / 602 FROM THE APPEALS COORDINATOR C.E. WILBER ALONG WITH AN APPEALS SCHEDULING FORM. BASED ON C.E. WILBER'S BELIEFS THAT MY (602) APPEAL CONCERNS WOULD AN ANTICIPATED ACTION AND/OR DECISION.

ON JULY 24TH 2007 AGAIN C.E. WILBER RETURNED MY (602) APPEAL WITH THE SAME RESPONSE GIVEN PREVIOUSLY. THAT MY APPEAL IS NOT SUBJECT TO APPEAL & AN ANTICIPATED ACTION. STATE & FEDERAL LAWS ARE CLEAR IN THAT INMATES ARE & WILL BE ALLOWED TO APPEAL ANY AND ALL INFORMATION

If you need more space, attach one additional sheet.

B. Action Requested: TO HAVE MY APPEAL, DATED ON 7-12-07, CONCERNING THE MATTER OF A (CDC 128-B) CHRONO, DATED JULY 3RD 2007, BE REOPENED AND PROCESSED WITH AN APPEALS LOG NUMBER, SO THAT I CAN FURTHER MY APPEAL.

Inmate/Parolee Signature: C. Rosbrugh Date Submitted: 7-27-07

C. INFORMAL LEVEL (Date Received: JUL 30 2007)

Staff Response: GRANTED. YOUR APPEAL REGARDING 128-B 7-6-07 HAS BEEN ASSIGNED TO THE FORMAL LEVEL OF REVIEW PER LATEST DIRECTION FROM THE INMATE APPEALS BRANCH.

Staff Signature: C. WILBER Date Returned to Inmate: 7-31-07

D. FORMAL LEVEL

If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigator's Report, Classification chrono, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.

Signature: _____ Date Submitted: _____

Note: Property/Funds appeals must be accompanied by a completed

CDC Appeal Number:

Board of Control form BC-1E, Inmate Claim



EXHIBIT

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

NAME: **ROSBROUGH, Cody**

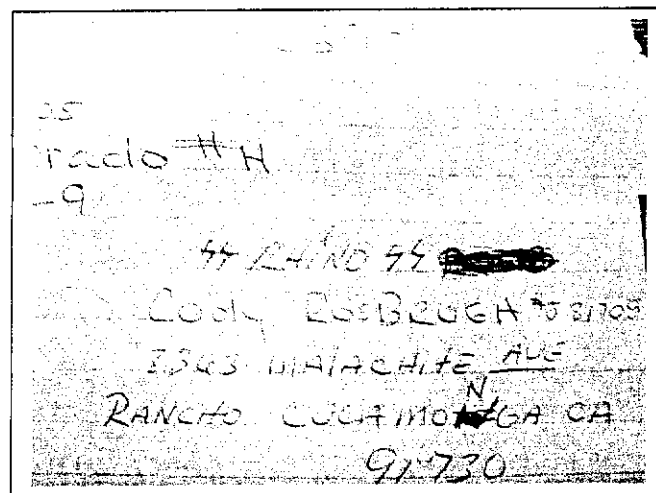
CDC # **J-81708**

CDC 128-B (REV. 4/74)

On July 3, 2007, while assigned to the Institutional Gangs Investigation (IGI) Unit, I searched the property of inmate Michael **HERRING**, K-08284, a.k.a. "Skunky", validated member of the Nazi Low Rider (NLR) prison gang, currently housed in the Security Housing Unit (SHU), Facility D, Unit 2, Cell 217L. During the course of the search I discovered the following item in **HERRING**'S property relative to NLR gang activity.

- One piece of paper containing addresses. On the paper **HERRING** has the name "Rhino" with lightning bolts on each side of the name. Below that **HERRING** had the name of Cody **ROSBROUGH**, J-81708, (validated member of the NLR prison gang, currently housed in SHU) with an address of "8363 Malachite Ave, Rancho Cucamonga, Ca. 91730". Third party mail drops are essential for prison gang communication. Prison gangs, specifically the NLR, utilize third party mail to disseminate orders regarding drugs, assaults, and money. Non-approved mail communication between the inmates requires a third-party mail drop. The third party consists of someone in the community willing to receive messages on behalf of one inmate and forward the communication to the other inmate. The lightning bolts which bracketed inmate **ROSBROUGH**'S name are significant in that they represent the symbol utilized by the Nazi Schutzstaffel (SS) who were specially selected elite soldiers in Nazi Germany. It is apparent when used in this context that **HERRING** considers inmate **ROSBROUGH** to be an elite warrior. It is also significant in that **ROSBROUGH**'S name was the only name which contained this designation.

HERRING having the name and state identification number along with the third party address of another validated NLR member indicates that **HERRING** is demonstrating continued participation in the NLR prison gang. With **HERRING** having the mentioned address for **ROSBROUGH** provides a direct link from a validated NLR member to another validated NLR member. There is an ongoing investigation to determine the scope of NLR activities at PBSP. This document meets the criteria set forth in California Code of Regulation CCR, Title 15, section 3378 (c), (8), (G), Association. This document should also be considered a source document in the validation of **HERRING** and **ROSBROUGH** as members of the NLR prison gang.



C. COUNTESS
Correctional Officer
Institution Gang Investigations
Pelican Bay State Prison

DATE: July 6, 2007

GANG CHRONO

CDC 128B

(7) Exh. B

(B)

CONTINUATION. A.

EXHIBIT "B"

CONCERNING ANY INMATES VALIDATION STATUS, WHETHER IT BE
 DROPPED ("STAFF OBSERVATION, VIEW POINT, ETC...") OR TO IT
 BEING AN OBSERVATION ON A 128-B FORM FROM I.G.I.
 WHATEVER AS LONG AS ITS PUT UPON A "FORMAL" DOCUMENT
 (SUCH AS A 128-B CURAND) AND PUT or PLACED INTO ANY
 INMATES CENTRAL FILE (C-FILE) IT IS AUTOMATICALLY SUBJECT
 TO APPEAL.

(B)

EXHIBIT "B"

(8) Exhibit "B"

PELICAN BAY STATE PRISON

SECOND LEVEL REVIEW

DATE: SEP 04 2007

Inmate: ROSBRUGH, J81708
 Pelican Bay State Prison
 Security Housing Unit
 Facility D1-213

RE: WARDEN'S LEVEL DECISION
 APPEAL LOG NO. PBSP-D-07-01668

APPEAL: **DENIED**
 ISSUE: CASE INFO/RECORDS

This matter was reviewed by Robert A. Horel, Warden, at Pelican Bay State Prison (PBSP).

All submitted documentation and supporting arguments have been considered, including the interview conducted at the Second Level of Review. Additionally, a thorough investigation has been conducted into the claim presented by the inmate and the documentation evaluated in accordance with PBSP's institutional procedures and the California Department of Corrections and Rehabilitation (CDCR) policies.

ISSUES

In Section A of the Appeal Form, inmate ROSBRUGH takes issue with a CDC 128B dated July 6, 2007, authored by Correctional Officer C. Countess. Inmate ROSBRUGH asserted that this document did not meet the criteria for validation requirements as agreed to in the Castillo v. Alameida settlement.

Inmate ROSBRUGH requested for the CDC 128B be stricken from his Central File and never be used against him.

The Informal Level, Formal Level, and First Level were bypassed in this Appeal.

FINDINGS

I

Sergeant D. Barneburg reviewed this matter and determined that this Appeal did not meet the criteria set forth in California Code of Regulations (CCR), Title 15, Section 3084.1, which states in part; "(a) Any inmate or parolee under the department's jurisdiction may appeal any departmental decision, action, condition, or policy which they can demonstrate as having an adverse effect upon their welfare."

In this instance, inmate ROSBRUGH is appealing the placement of a CDC 128B in his Central File, requesting that it never be used against him in the future. ROSBRUGH has failed to demonstrate the placement of this chrono in his file as having an adverse effect, only that it may affect him in the future. In addition to the anticipated action, ROSBRUGH fails to demonstrate how this CDC 128B adversely affects his welfare. This CDC 128B Gang Chrono is not a decision, action, condition, or policy, therefore, clearly does not meet the criteria set forth under CCR, Title 15, Section 3084.1.

(8) Exhibit "B"

Second Level Reviewer's Response
Appeal Log #: PBSP-D-07-01668
Inmate ROSBRUGH, J81708
Page 2

(10) Exhibit "B"


ROSBRUGH stated that the chrono does not meet the validation requirements agreed to in the Castillo versus Alameida settlement. Sergeant Barneburg reviewed the CDC 128B Gang Chrono and determined it met the validation requirements established in California Code of Regulations (CCR) Title 15, Section 3378 and the Castillo versus Alameida settlement. However, as this document was not used in inmate ROSBRUGH's most recent inactive review, this argument is irrelevant.

DETERMINATION OF ISSUE

This Appeal is DENIED at the Second Level of review as inmate ROSBRUGH cannot demonstrate an adverse effect upon his welfare due to the inclusion of this CDC 128B in his Central File. Therefore, inmate ROSBRUGH's request to have the CDC 128B removed from his Central File is DENIED.

MODIFICATION ORDER

No modification of this decision or action is required.



ROBERT A. HOREL
Warden

(10) EXHIBIT "B"

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS AND REHABILITATION

INMATE APPEALS BRANCH

P. O. BOX 942883

SACRAMENTO, CA 94283-0001

DIRECTOR'S LEVEL APPEAL DECISION

Date: DEC 18 2007

In re: Cody Rosbrugh, J81708
Pelican Bay State Prison
P.O. Box 7000
Crescent City, CA 95531-7000

IAB Case No.: 0709459

Local Log No.: PBSP-07-01668

This matter was reviewed on behalf of the Director of the California Department of Corrections and Rehabilitation (CDCR) by Appeals Examiner J. Stocker, Facility Captain. All submitted documentation and supporting arguments of the parties have been considered.

I APPELLANT'S ARGUMENT: It is the appellant's position that a CDC Form 128-B, General Chrono dated July 6, 2007, characterized as a "gang chrono," identifies Inmate Herrin, K-08284, a validated member of the Nazi Low Rider prison gang, as having in his personal address book the name and address of the appellant's grandmother. The author asserts that the address is present to afford the use of the address as a drop for third party mailings to the appellant for gang communication. The author reports that the chrono should be used as a source document for a future gang validation. He requests removal of the document from his central file and restriction of its use in future gang validations.

II SECOND LEVEL'S DECISION: The reviewer found that the appellant has not demonstrated an adverse effect of the chrono and his request to not use it in future gang validation documents is speculative of a future action, neither of which are subject to appeal. The second level response notes that the chrono satisfies regulations and the Castillo court settlement to be used as a source document in a potential gang validation.

III DIRECTOR'S LEVEL DECISION: Appeal is denied.

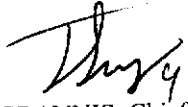
A. FINDINGS: The CDC 128-B of concern was examined at the Director's Level of Review. The author reports the finding of the appellant's nickname, "Rhino," along with lightning bolts beside the appellant's grandmother's address. The appellant is a validated member of the Nazi Low Rider prison gang. The author's reported observations are fact-based and import sound correctional experience and judgment in concluding that the address is likely used to conduct unauthorized communication between gang members in a third-party mail transfer. The chrono is fully consistent with existing regulation and policy and there is no need to modify or remove the chrono from the central file. Future use of the chrono in a gang validation is not subject to appeal at this time; however, the appellant can appeal the use if and when it is used to support such action.

B. BASIS FOR THE DECISION:

California Code of Regulations, Title 15, Section: 3084.1, 3084.3, 3378
CDC Operations Manual Section: 13030.10, 72010.7.2

C. ORDER: No changes or modifications are required by the Institution.

This decision exhausts the administrative remedy available to the appellant within CDCR.


N. GRANNIS, Chief
Inmate Appeals Branch

cc: Warden, PBSP
Appeals Coordinator, PBSP

(11) Exhibit "B"

EXHIBIT C

RECEIVED 2
1030
6/8

PELICAN BAY STATE PRISON

SECURITY HOUSING UNIT

INMATE/PAROLEE
APPEAL FORM
CDC 802 (12/87)

UNIT D-1

PBSP

Log No.

Category

You may appeal any policy, action or decision which has a significant adverse affect upon you. With the exception of Serious CDC 115s, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeals Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

NAME	NUMBER	ASSIGNMENT	UNIT/ROOM NUMBER
ROSBURN	J-81708		D-1-213

A. Describe Problem: ON FRIDAY AUG-3RD, 2007 I GAVE BUCHANAN CAME TO MY CELL DOOR AND HANDED ME 2 CDC 1030 (CONFIDENTIAL INFO FORMS) THE 1ST 1030 FORM DATED MAY 22ND, 2006 STATED THAT I (SUPPOSEDLY) FORWARDED (SUPPRESSED) INFORMATION REGARDING ARYAN BROTHWOOD POLITICS, AND OR PROVIDING INSTRUCTION ON ACTS (SUPPOSEDLY) TO BE ACCOMPLISHED. IT ALSO STATES THAT THIS SOURCE'S RELIABILITY WAS BASED ON (1) THIS SOURCE HAS PREVIOUSLY GIVEN CONFIDENTIAL INFO WHICH WAS PROVEN TO BE TRUE (2) MORE THAN ONE SOURCE INDEPENDENTLY PROVIDED THE SAME INFORMATION. (3) THIS SOURCE INCRIMINATED HIM/HERSELF IN A CRIMINAL ACTIVITY AT THE TIME OF PROVIDING

If you need more space, attach one additional sheet.

B. Action Requested: TO BE GIVEN "IN-ACTIVE" STATUS. TO HAVE THESE 2 (1030 FORMS) BE STRICKEN FROM MY FILES AS THEY DO NOT STATE SPECIFIC ACTS, DATES, TIMES, PLACES OF "ALLOWED" CAME ACTIVITY. I FURTHER REQUEST UNDER THE "FREEDOM OF INFORMATION ACT" ANY AND ALL DOCUMENTS PERTAINING TO MY VALIDATION AND OR ACTIVITY IN ACTIVE

Inmate/Parolee Signature: [Signature] Date Submitted: 8-6-07

C. INFORMAL LEVEL (Date Received: _____)

Staff Response: _____

Staff Signature: _____ Date Returned to Inmate: _____

D. FORMAL LEVEL
If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigator's Report, Classification chrono, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.

Signature: _____ Date Submitted: _____
Note: Property/Funds appeals must be accompanied by a completed
Board of Control form BC-1E, Inmate Claim

AUG 21 2007
10 [Signature]
CDC Appeal Number:

(i) EXH. C

CONTINUED A. (1)

THE INFORMATION. (4) PART OF THE INFO PROVIDED IS CORROBORATED THROUGH INVESTIGATION, OR BY INFO PROVIDED BY NON-CONFIDENTIAL SOURCES.

THE 2ND C.D.C. 1030 DATED JULY 16, 2004 STIPULATED THAT I (SUPPOSEDLY) IDENTIFIED AS A (SUPPOSED) MEMBER OF N.I.R. AND (SUPPOSEDLY) GIVING ORDERS TO OTHER WHITE INMATES. THIS CONFIDENTIAL SOURCE WAS DEEMED RELIABLE BECAUSE PART OF THE INFO PROVIDED IS CORROBORATED THROUGH INVESTIGATION, OR BY INFO PROVIDED BY NON-CONFIDENTIAL SOURCES.

NOW TO BRING TO LIGHT UPON WHICH C.D. BUREAU (IGT) MAY OR MAY NOT BE PRIVY TO.

*+ ACCORDING TO THE FACTS ** PER: CASTILLO V. ALAMANDA SETTLEMENT

(A) PARAGRAPH *21 "NO COUNTRY LIST" THAT IS WITHIN CONFIDENTIAL SOURCES. INCLUDING "DABREIFER" IDENTIFY A PRISONER AS AN ASSOC. / MEMBER BY LISTING NAMES OF I/M'S WITHOUT REFERENCE TO SPECIFIC GANGLA-RELATED ACTS PERFORMED BY I/M'S SHALL NOT BE RELIED UPON AS A SOURCE ITEM; CONFIDENTIAL SOURCE ITEMS MUST IDENTIFY GANGLA ACTIVITY / CONDUCT PERFORMED BY THE ALLEGED ASSOC / MEMBER BEFORE SUCH INFO CAN BE CONSIDERED AS A SOURCE ITEM.

(B) UNLAWFUL CONFIDENTIAL SOURCE ITEM OR CONFIDENTIAL MEMO IT MUST BE RECORDED BY STAFF / C.D.'S AND PROVIDED TO THE I/M'S IN WRITTEN FORM.

(C) ON JUNE 15TH 2006 C.C.I. BARNES PROVIDED ME WITH A CONFIDENTIAL INFORMATION LISTING FORM (810) AND TO WIT IT STIPULATES THAT ALL CONFIDENTIAL MEMOS MUST BE INDEXED PER CASTILLO V. ALAMANDA: UNLAWFUL FORM. THE 1030 DATED MAY 22, 06 WAS NOT RECORDED AND OR DOCUMENTED AT ALL THEREFOR A VIOLATION OF PROCEEDURE PER CASTILLO V. ALAMANDA

(D) CONFIDENTIAL MEMO (1030) DATED 5.22.06 DOES NOT STATE SPECIFIC ACTS, DATES, TIMES AND LOCATIONS OF ALLEGED GANGLA ACTIVITY. IT DOESN'T STATE ANYTHING OTHER THAN "HERESAY". (*23) CASTILLO V. ALAMANDA "HERESAY" = CANNOT BE USED AND WILL BE EXPUNGED FROM ANY RECORD; TO WIT "EXCLUSIVE RELIANCE UPON "HERESAY" FROM CONFIDENTIAL SOURCES [WILL NOT] BE USED AS A SOURCE ITEM FOR VALIDATION.

(E) CONFIDENTIAL MEMO C.D.C. (1030) DATED JULY 16TH, 2004 STIPULATES THAT PART OF THE INFO PROVIDED ~~IS~~ IS CORROBORATED THROUGH INVESTIGATION OR BY

(2) EXH. "C"

CONTINUED A. (2)

INFO PROVIDED BY NON-CONFIDENTIAL SOURCES. IN CONFIDENTIAL MANNER IS IT ETHICAL WAY. IT CANNOT BE USED AS A SOURCE ITEM BECAUSE IT IS "HERESAY."

(E) CONFIDENTIAL MEMO(1030) DATED JULY 16, 07 DOES NOT STATE SPECIFIC ACTS, DATES, TIMES, PLACES OF ALLEGED GANG ACTIVITY.

(F) INFORMATION IN BOTH (1030 FORMS) IS BEING INAPPROPRIATELY USED BECAUSE.

(1) MATERIAL PROVIDES "SPECIFIC ACTS, DATES, TIMES, PLACES OF ALLEGED GANG ACTIVITY."

(2) BOTH 1030 FORMS ARE OUTRIN AND "HERESAY."

(3) BOTH 1030 FORMS STATE DATES OF "DEBRIEFERS" ORIGINAL ALLEGED INFO. HOWEVER DO NOT GIVE DATES OF ALLEGED GANG ACTIVITY.

(4) EDC 1030 DATED 5-22-06 WAS NOT PLACED IN MY '810' CONFIDENTIAL LISTING FIRM. VIOLATED IN ADMISSABLE AS A VIOLATION OF PROCEEDURE.

BOTH (1030 FORMS) ARE INADMISSABLE ^{AS} EVIDENCE AND DE-FACTO CALL LIGHT UPON THE VERACITY & VALIDITY OF IGT STAFFS FINDINGS, OR REPORTS NOT ONLY ON ME AS WELL AS EVERY OTHER INMATE WHO HAS SUBMITTED TO THIS VIOLATION OF BOTH EIGHTH (8TH) AND FOURTEENTH (14TH) AMENDMENTS AS WELL AS THE COLOR OF LAW.

ACTIVITIES CITED.

8TH & 14TH AMENDMENTS. CASTILLO V ALAMEDA, COLOR OF LAW.

CONTINUED B. ACTION REQUESTED.

STATUS AS AN ALLEGED PRISON GANG MEMBER.

I WOULD ALSO LIKE TO KNOW IF THESE 2 "DEBRIEFERS" WERE GIVEN AND PASSED "PSYCHOLOGICAL EXAMINATIONS" TO DETERMINE WHETHER OR NOT THEY ARE LYING.

(3) EXH "C"
UNIT D-1

SECURITY HOUSING UNIT
PELICAN BAY STATE PRISON

STATE OF CALIFORNIA
CONFIDENTIAL INFORMATION LISTING
CDC 810 (Rev. 10/02)DISTRIBUTION
ORIGINAL - CENTRAL FILE - CONFIDENTIAL FOLDER
CANARY - INMATE/PAROLEE
PINK - INMATE'S ATTORNEY OR OTHER PERSON DESIGNATED TO EXAMINE THE CENTRAL FILE (IF APPLICABLE)
DEPARTMENT OF CORRECTIONS

This is to inform the person(s) requesting to examine the Central File of the inmate/parolee noted at the bottom of this form that the below listed document(s) have been classified by the Department of Corrections as confidential for the reasons stated and will not be made available to the person(s) requesting to examine the Central File, except by order of an appropriate court. If there are no confidential documents in the inmate/parolee's Central File, "None" shall be written in the first space under "DATE OF DOCUMENT." **Note:** This form is only completed or updated by the staff person reviewing the Central File in preparation for *In re Olson* examination of the Central File by the inmate/parolee, his or her attorney, or other designated person.

Letter codes used below to describe why the withheld document is classified as confidential:

- (A) The document contains information that, if known to the inmate/parolee or others, would endanger the safety of any person.
 (B) The document contains information that would jeopardize the security of the institution.
 (C) The document contains specific medical or psychological information that, if known to the inmate/parolee, would be medically or psychologically detrimental to the inmate/parolee.
 (D) The document contains information provided and classified confidential by another governmental agency.

DESCRIPTION OF WITHHELD CONFIDENTIAL DOCUMENT(S)

DATE OF DOCUMENT	TYPE OF WITHHELD DOCUMENT (i.e., memorandum, letter, CDC 128B, etc.)	REASON FOR CONFIDENTIALITY (write applicable letter code)	DATE DOCUMENT WAS ADDED OR REMOVED FROM THIS LISTING Note: This date must match the date next to the Staff Reviewer's signature
12-26-95	Confidential Memo	A, B	<input type="checkbox"/> Added Date: 6-15-06 <input type="checkbox"/> Removed Date:
2-23-98			<input type="checkbox"/> Added Date: <input type="checkbox"/> Removed Date:
3-20-98			<input type="checkbox"/> Added Date: <input type="checkbox"/> Removed Date:
5-6-98			<input type="checkbox"/> Added Date: <input type="checkbox"/> Removed Date:
6-3-98			<input type="checkbox"/> Added Date: <input type="checkbox"/> Removed Date:
6-3-98			<input type="checkbox"/> Added Date: <input type="checkbox"/> Removed Date:
11-4-97			<input type="checkbox"/> Added Date: <input type="checkbox"/> Removed Date:
12-17-98			<input type="checkbox"/> Added Date: <input type="checkbox"/> Removed Date:
6-14-00			<input type="checkbox"/> Added Date: <input type="checkbox"/> Removed Date:
8-3-00			<input type="checkbox"/> Added Date: <input type="checkbox"/> Removed Date:
8-2-01	✓	✓	<input type="checkbox"/> Added Date: <input type="checkbox"/> Removed Date:
2-28-02			<input type="checkbox"/> Added Date: <input type="checkbox"/> Removed Date:

CERTIFICATION OF CENTRAL FILE REVIEW AND UPDATE OF THIS CONFIDENTIAL INFORMATION LISTING

This is to certify that I have reviewed the Central File of the inmate/parolee noted at the bottom of this form and have authorized the withholding of the above listed documents from examination by the person(s) requesting to review the Central File.

PRINTED NAME OF STAFF REVIEWER	TITLE	SIGNATURE	DATE
W. Baanta	CCI	W Baanta	6-15-06

CDC NUMBER

J81708

NAME

ROSBURGH

PAGE 1 OF 2

EXHIBIT "A" - (4/02)

STATE OF CALIFORNIA
CDC 1030 (12/86)

DEPARTMENT OF CORRECTIONS

CONFIDENTIAL INFORMATION DISCLOSURE FORM

INMATE NUMBER: J-81708 INMATE NAME: ROSBRUGH

1) Use of Confidential Information.

Information received from a confidential source(s) has been considered in the:

a) Active/Inactive Review submitted by, BUCHANAN, T. S., C.O.
STAFF NAME, TITLE

2) Reliability of Source.

The identity of the source(s) cannot be disclosed without endangering the source(s) or the security of the institution.

This information is considered reliable because:

- 1.) ☒ This source has previously provided confidential information which has proven to be true.
- 2.) ☒ More than one source independently provided the same information.
- 3.) ☒ This source incriminated himself/ herself in a criminal activity at the time of providing the information.
- 4.) ☒ Part of the information provided is corroborated through investigation, or by information provided by non-confidential sources.
- 5.) ☐ This source participated in and successfully completed a Polygraph examination.
- 6.) ☐ Other (Explain)

3) Disclosure of information received.

Documented is that **ROSBRUGH** was forwarding information regarding Aryan Brotherhood (AB) politics to another member of the NLR. Along with this information **ROSBRUGH** was also providing instruction on acts required to be accomplished by order of the AB. This activity associated with the AB is significantly related to the NLR as the formation and prison activities of the NLR have been conducted with the approval of the AB. NLR members have been utilized as group for recruitment into the AB. The politics of the NLR regarding the AB have been undecided with many NLR members taking the stance of "FTB" (Fuck the Brand) do to the manipulation of the NLR and arrogant attitudes displayed toward the NLR by AB members. **ROSBRUGH's** assistance with forwarding orders of the AB displays his personal feelings of the AB as been held in high regard

(If additional space needed, attach another sheet.)

4) Type and current location of documentation, (for example: CDC-128-B of 5-15-86 in the confidential material folder).

Confidential Memorandum of 05/22/2006 in the confidential material folder of the Central File.[Signature], Gang Investigations Officer.August 3, 2007
DATE DISCLOSED

STAFF SIGNATURE, TITLE

DISTRIBUTION: WHITE ☐ Central File; GREEN ☐ Inmate; YELLOW ☐ Institution Use

STATE OF CALIFORNIA
CDC 1030 (12/86)

CONFIDENTIAL INFORMATION DISCLOSURE FORM

INMATE NUMBER: J-81708 INMATE NAME: ROSBRUGH

1) Use of Confidential Information.

Information received from a confidential source(s) has been considered in the:

a) Active/Inactive Review submitted by, BUCHANAN, T. S., C.O.
STAFF NAME, TITLE

2) Reliability of Source.

The identity of the source(s) cannot be disclosed without endangering the source(s) or the security of the institution.

This information is considered reliable because:

1.) ☐ This source has previously provided confidential information which has proven to be true.

2.) ☐ More than one source independently provided the same information.

3.) ☐ This source incriminated himself/ herself in a criminal activity at the time of providing the information.

4.) ☒ Part of the information provided is corroborated through investigation, or by information provided by non-confidential sources.

5.) ☐ This source participated in and successfully completed a Polygraph examination.

6.) ☐ Other (Explain)

3) Disclosure of information received.

Documented is that **ROSBRUGH** is identified as a member of the NLR who is giving orders to other white inmates. **ROSBRUGH** is also identified as targeting inmates for assault if they do not comply with these orders.

(If additional space needed, attach another sheet.)

4) Type and current location of documentation, (for example: CDC-128-B of 5-15-86 in the confidential material folder).

Confidential Memorandum of 07/16/2004 in the confidential material folder of the Central File.

[Signature], Gang Investigations Officer.

STAFF SIGNATURE, TITLE

August 3, 2007
DATE DISCLOSED

DISTRIBUTION: WHITE ☐ Central File; GREEN ☐ Inmate; YELLOW ☐ Institution Use

EMERSON BAY STATE PRISON SECURITY HOUSING UNIT UNIT D-1

ROSBRYGH

Number:

J-81708

Housing:

D1 213

YOUR APPEAL IS BEING REJECTED/CANCELLED AND RETURNED FOR THE FOLLOWING:

Screening Appeals Rejection Criteria:

- [] 1. The resolution is not within CDC's jurisdiction. See CCR, Title 15, Sections 3084.2(e) and 3084.3(c)(1).
- [] 2. The appeal duplicates the inmates previous appeal. See CCR, Title 15, Section 3084.3(c)(2).
[] (a) Your appeal has been screened out on _____ for _____
[] (b) Your appeal is being reviewed at the _____ Level, Log # _____
[] (c) Your appeal has been completed at the _____ Level, Log # _____
- ☒ 3. The appeal concerns an anticipated action or decision. See CCR, Title 15, Section 3084.3(c)(3).
- [] 4. The appeal exceeds the 15 working days time limit, and the inmate has failed to offer a credible explanation as to why he could/did not submit the appeal within the time limit. See CCR, Title 15, Sections 3084.2(e), 3084.3(c)(6), and 3084.6(c).
- Abuse of the Appeal Process/Right to Appeal.**
- [] (a) Excessive filings. Submission of more than one non-emergency appeal within a seven-calendar-day period is excessive. See CCR, Title 15, Section 3084.4(a).
- [] (b) Inappropriate statements. The Appeal contains false information, profanity, or obscene language. The appeal is rejected. See CCR, Title 15, Section 3084.4(b).
- [] (c) Excessive verbiage. Appeal cannot be understood or is obscured by pointless verbiage or voluminous, unrelated documentation. See CCR, Title 15, Section 3084.4(c).
[] (1) Only allowed 1 added page, front and back, to describe the problem and action requested in Sections A and B, per CCR, Title 15, Section 3084.2(a)(1).
[] (2) Only supporting documentation necessary to clarify appeal shall be attached to the appeal, per CCR, Title 15, Section 3084.2(a)(2).
- [] (d) Lack of cooperation. Appellant refused to cooperate and/or interview with the reviewer which has resulted in cancellation of the appeal, per CCR, Title 15, Section 3084.4(d).
[] (1) Your appeal was screened out and returned to you with instructions: [] [] []
- [] (e) Failed to reasonably demonstrate his decision, action, policy, or condition is having an adverse affect upon the inmate's welfare, per CCR, Title 15, Section 3084.1(a).
- [] (f) This is a request for information. It is not an appeal. Write a note (GA-22, Request For Interview form or CDC-7362, Medical Request form).
- [] 9. Cannot appeal on behalf of another inmate/person. See CCR, Title 15, Sections 3084.2(d) and 3084.3(c)(7).
- [] 10. Issue resolved at previous level of Appeal review. See CCR, Title 15, Sections 3084.3(c)(8) and 3084.4(d).

Comments:

YOU WERE APPROPRIATELY NOTIFIED OF CONFIDENTIAL INFORMATION THAT COULD AFFECT YOU IN THE FUTURE. IF/when OCS TAKES AN ACTION BASED ON THIS INFORMATION, YOU CAN APPEAL AT THAT TIME.

C. Wilber

C. E. WILBER
Appeals Coordinator

AUG 28 2007

Date

This screening decision may not be appealed unless you can support an argument that the above is inaccurate. In such a case, please return this form to the Appeals Office with the necessary supporting information.

PERMANENT APPEAL ATTACHMENT - DO NOT REMOVE

AUG 27 2007

PBSP

(Rev. 11/06)

CCR 3084.3(d)

PBSP

Exhibit

EXHIBIT "D"

PELICAN BAY STATE PRISON SECURITY HOUSING UNIT UNIT D-1

DEPARTMENT OF CORRECTIONS

STATE OF CALIFORNIA

INMATE/PAROLEE APPEAL FORM CDC 802 (12/87)

Location: Institution: **PBSP**

Log No.

Category

10/12

You may appeal any policy, action or decision which has a significant adverse affect upon you. With the exception of Serious CDC 115s, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeals Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

NAME	NUMBER	ASSIGNMENT	UNIT/ROOM NUMBER
ROSEBRUGH	J-81708		D-1-213

A. Describe Problem: on 8-28-07 I RECEIVED MY 602 INMATE APPEAL FORM BACK (DATED 8-8-07) WHICH WAS REJECTED BECAUSE "THE APPEAL COORDINATOR'S INITIALS WERE NOT ACTION OR DECISION. (THE 15 SECTION 5084.3(C)(2)) C.E. WILKIN. THIS IS THE FACT SUBJECT TO APPEAL PROCESS AND NOT IN THE FUTURE TENSE. STATE & FEDERAL LAWS ARE VERY CLEAR IN THAT INMATES ARE AND WILL BE ALLOWED TO APPEAL ANY & ALL INFORMATION CONCERNING ANY INMATES VALIDATION STATUS, INCLUDING ITS DETAILED (STAFF OBSERVATION, VIEW POINT, ETC.) OR TO IT BEING ON A CDC-1030 FORM FROM I.O.E. WILKIN WITH AS LONG AS IT IS PUT UPON A FORMAL DOCUMENT (SUCH

If you need more space, attach one additional sheet.

B. Action Requested: THAT MY APPEAL DATED AUGUST 20TH 07 BE ENCLOSED BE PROCESSED AND ISSUED A LOG NUMBER

Inmate/Parolee Signature: CAROL ROSEBRUGH

Date Submitted: 8-29-07

C. INFORMAL LEVEL (Date Received: _____)

Staff Response: _____

Staff Signature: _____ Date Returned to Inmate: _____

D. FORMAL LEVEL

If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigator's Report, Classification chrono, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.

Signature: _____

Date Submitted: _____

CDC Appeal Number: _____

Note: Property/Funds appeals must be accompanied by a completed

Board of Control form BC-1E, Inmate Claim

AUG 30 2007

① Exhibit D

CONTINUED A.

(2) Exh. "D"

AS A CDC 1030) AND PLACED INTO MY INMATES CENTRAL FILE (C-FILE) IT IS AUTOMATICALLY SUBJECT TO APPEAL.

C.F. WILLBOL. THIS IS THE SECOND TIME I'VE HAD TO APPEAL THE AND YOUR DECISION ON THE SAME MATTER (INMATE APPEAL DATED JULY 27, 2007) IN WHICH YOU REVERSED YOUR DECISION BASED ON LACK OF LEGAL KNOWLEDGE, AND GRANTED MY APPEAL (LOG # PBSF-D-07-01668) THIS IS A BLATANT DISREGARD AND OR NEGLIGENCE ON YOUR PART TO DISSUADE INMATES HOUSED IN PELICAN BAY STATE PRISON (SIL) FROM CONTINUING AND/OR COMPLETING THEIR GOOD INMATE APPEALS. I EXPECT THIS MATTER TO BE COLLECTED AND MY GOOD INMATE APPEAL (DATED AUGUST 07TH 07) AND ALL ATTACHED DOCUMENTS WILL STAY WITH SAID APPEAL AND FURTHER MORE, THAT THIS PREJUDICE TOWARDS MYSELF WILL CEASE AND DISSEI.

PELICAN BAY STATE PRISON
SECURITY HOUSING UNIT
UNIT D-1

(2) Exh. "D"

(3) Exhibit "D"
INMATE/PAROLEE APPEALS SCREENING FORMNumber: J81708 Housing: D1 213

YOUR APPEAL IS BEING REJECTED/CANCELLED AND RETURNED FOR THE FOLLOWING:

Screening Appeals Rejection Criteria:

- ☐ 1. The resolution is not within CDC's jurisdiction. See CCR, Title 15, Sections 3084.2(e) and 3084.3(c)(1).
- ☐ 2. The appeal duplicates the inmates previous appeal. See CCR, Title 15, Section 3084.3(c)(2).
☐ (a) Your appeal has been screened out on _____ for _____
☐ (b) Your appeal is being reviewed at the _____ Level, Log # _____
☐ (c) Your appeal has been completed at the _____ Level, Log # _____
- ☐ 3. The appeal concerns an anticipated action or decision. See CCR, Title 15, Section 3084.3(c)(3).
- ☐ 6. The appeal exceeds the 15 working days time limit, and the inmate has failed to offer a credible explanation as to why he could/did not submit the appeal within the time limit. See CCR, Title 15, Sections 3084.2(c), 3084.3(c)(6), and 3084.6(c).
- ☒ 8. Abuse of the Appeal Process/Right to Appeal.
☐ (a) Excessive filings. Submission of more than one non-emergency appeal within a seven-calendar-day period is excessive. See CCR, Title 15, Section 3084.4(a).
☐ (b) Inappropriate statements. The Appeal contains false information, profanity, or obscene language. The appeal is rejected. See CCR, Title 15, Section 3084.4(b).
☐ (c) Excessive verbiage. Appeal cannot be understood or is obscured by pointless verbiage or voluminous, unrelated documentation. See CCR, Title 15, Section 3084.4(c).
☐ (1) Only allowed 1 added page, front and back, to describe the problem and action requested in Sections A and B, per CCR, Title 15, Section 3084.2(a)(1).
☐ (2) Only supporting documentation necessary to clarify appeal shall be attached to the appeal, per CCR, Title 15, Section 3084.2(a)(2).
☒ (d) Lack of cooperation. Appellant refused to cooperate and/or interview with the reviewer which has resulted in cancellation of the appeal, per CCR, Title 15, Section 3084.4(d).
☐ (1) Your appeal was screened out and returned to you with instructions: (DISPUTE SCREENING DECISION)
☐ (2) _____
☐ (e) Failed to reasonably demonstrate the decision, action, policy, or condition as having an adverse affect upon the inmate's welfare, per CCR, Title 15, Section 3084.1(a).
☐ (f) This is a request for information. It is not an appeal. Write a note (GA-22, Request For Interview form or CDC-7362, Medical Request form).
- ☐ 9. Cannot appeal on behalf of another inmate/person. See CCR, Title 15, Sections 3084.2(d) and 3084.3(c)(7).
- ☐ 10. Issue resolved at previous level of Appeal review. See CCR, Title 15, Sections 3084.3(c)(8) and 3084.4(d).

Comments: YOU ABSOLUTELY HAVE THE RIGHT TO DISPUTE
(APPEAL) YOUR INACTIVE REVIEW. YOUR APPEAL,
HOWEVER, IS PREMATURE BASED ON DIRM
AND CCR 3084 WHICH DICTATE SCREENING DECISIONS.

C. Wilber

C. E. WILBER
Appeals Coordinator

SEP 05 2007

Date

This screening decision may not be appealed unless you can support an argument that the above is inaccurate.
In such a case, please return this form to the Appeals Office with the necessary supporting information.

PERMANENT APPEAL ATTACHMENT - DO NOT REMOVE

PBSP

(Rev. 11/06)

CCR 3084.3(d)

PBSP

AUG 30 2008

(3) Exhibit "D"

EXHIBIT E

INACTIVE
RECOMMENDATION
6/8
TO OCS

INMATE/PAROLEE APPEAL FORM

CDC 802 (12/87)

Location: Institution/Parole Region

Log No.

Category

1. **PBSP**
2. _____

1. _____
2. _____

You may appeal any policy, action or decision which has a significant adverse affect upon you. With the exception of Serious CDC 115s, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeals Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

NAME ROSBRIGHT	NUMBER J-8708	ASSIGNMENT	UNIT/ROOM NUMBER D-1-213
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A. Describe Problem: ON 10-7-07 I GOT RETURNED THEIR RESPONSE TO MY ACTION/IN-ACTION REVIEW CONCERNING THE (2) CONFIDENTIAL DISCLOSURE FORMS (CDC-128-B) SEE ATTACHED EXHIBITS "A & B", P. 1-2 ALONG WITH (2) PAGES THAT APPEAR TO BE (I.G.I.) CLERKS TO BE LOOKED UPON AS "INVESTIGATING DOCUMENTS" SEE ATTACHED EXHIBITS "C-D" P. 3-4. ALL 4 PAGES WERE SIGNED BY I.G.I. C/O T.S. BUXHMAN ALSO BY COLLECTORIAL LIAUTENANT J.A. MCKINLEY, ALSO I.G.I. NOW IN THEIR (ARTIFICIAL) INVESTIGATION, C/O BUXHMAN TRIES TO ESTABLISH SOME SORT OF BASIS THAT PLAINTIFF (ME) (S. PROBABLY) IS ACTIVE PRISON GANG MEMBER. EVEN

If you need more space, attach one additional sheet.

B. Action Requested: TO BE GIVEN "IN-ACTION" STATUS. TO HAVE THEM (2) (10305) BE STRICKEN FROM MY FILE AS THEY DO NOT STATE SPECIFIC ACTS, DATES, TIMES, PLACES OF ALLEGED GANG ACTIVITY. I REQUEST THAT (10305) NOT BE USED AGAINST ME NOW NOR IN THE FUTURE. I FURTHER REQUEST UNDER THE FREEDOM OF INFORMATION ACT, ANY & ALL

Inmate/Parolee Signature: [Signature]

Date Submitted: 8-10-4-07

C. INFORMAL LEVEL (Date Received: _____)

Staff Response: _____

Staff Signature: _____

Date Returned to Inmate: _____

D. FORMAL LEVEL

If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigator's Report, Classification chrono, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.

Signature: _____

Date Submitted: _____

CDC Appeal Number: _____

Note: Property/Funds appeals must be accompanied by a completed Board of Control form BC-1E, Inmate Claim

OCT 09 2007

10

ALL PRISON
RISING UNIT

D-1

(i) Exh. 'E'

CONTINUED A- (2)

ACTS, DATES, TIMES AND PLACES OF "ALLEGED GANG ACTIVITY" AND IS NOTHING MORE THAN HEARSAY & A LAUNDRY LIST.

(D) "ALLEGED" INFORMATION IN BOTH (1030) IS BEING IN-APPROPRIATELY USED BECAUSE

- * 1. MATERIAL PROVIDES SPECIFIC ACTS DATES, TIMES, PLACES OF ALLEGED GANG ACTIVITY.
- * 2. BOTH 1030'S ARE ENTIRE. HEARSAY, & LAUNDRY LISTS.
- * 3. ALLEGEDLY IMPLICATING YOURSELF IN CRIMINAL ACTIVITY MUST SHOW AND PROVE THAT CRIMINAL ACTIVITY "PUNISHABLE" CRIMINAL ACTIVITY DID INDEED TAKE PLACE. I've RECEIVED NO CASE NOR 115
- * 4. IF THE DEBRIEFER KNOWS HE WILL NOT BE PUNISHED BY IMPLICATING HIMSELF. IN FACT, HE MUST BE PROTECTED. SELF INCRIMINATION IS NOT A VALID NOTE FOR FACT & FICTION.

(E) I.G.I OFFICERS ARE USING SCARE TACTICS & INTIMIDATIONS ON DEBRIEFERS WHO HAVE ALREADY CROSSED THE LINE AND DO NOT WANT TO BE PULLED BACK IN. THE SIG AND ARE NOW AT THE MERCY OF I.G.I TO KEEP THEM SAFE AND "REWARDED" FOR DEBRIEFING.

(F) BOTH (1030) FORMS ARE ENTIRE AND IN-ADMISSIBLE AS EVIDENCE AND DE-FACTO CALL LIGHT ON THE VERACITY & VALIDITY OF I.G.I STAFF FINDINGS. NOT ONLY ON ME BUT EVERY OTHER INMATE WHO HAS SUBMITTED TO THIS VIOLATION OF BOTH EIGHTH (8TH) & FORTYFOURTH (44) AMENDMENTS. AS WELL AS THE CODE OF LAW.

AUTHORITIES CITED

8TH & 14TH AMENDMENTS. CASTILLO V. ALMEIDA. CODE OF LAW.

CONTINUE 'B' ACTION REQUESTED

DOCUMENTS PERTAINING TO MY VALIDATION AND OR ACTIVE/IN-ACTIVE STATUS AS AN ALLEGED PRISON GANG MEMBER.

I WOULD ALSO LIKE TO KNOW IF THESE DEBRIEFERS WERE GIVEN AND PASSED PSYCHELICS TO DETERMINE IF THEY ARE LYING.

CONTINUED A-1

PELICAN BAY STATE PRISON
SECURITY HOUSING UNIT
UNIT D-1

WORKING OUT TO OTHER OUTSIDE ELEMENTS TO FIND A LINK WITH MY NAME THROUGH
"LOCAL LAW ENFORCEMENT, THE OFFICE OF COLLECTIONAL SAFETY, POLICE/LEADS AND
WSTIN". TO WIT: ITS FOUND IN NOT ONLY IN ACTION BUT THAT NONE
OF THESE "BOOKIES" EVEN KNOW ME. (See EXHIBITS "C-D". P. 3-4)

ACCORDING TO THE FACTS PER CASTILLO V. ALAMIDA SETTLEMENT

(A) "NO LAUNDRY LISTS" PARAGRAPH "21" THAT IS WHEN CONFIDENTIAL SOURCES, INCLUDING
"DEBRIEFERS" IDENTIFY A PRISONER AS AN ASSOC./MEMBER BY LISTING NAMES OF IIM'S
WITHOUT REFERENCE TO SPECIFIC GANG RELATED ACTS PERFORMED BY IIM'S SHALL NOT
BE RELIED UPON AS A SOURCE ITEM; CONFIDENTIAL SOURCE ITEMS MUST IDENTIFY
GANG ACTIVITY/CONDUCT PERFORMED BY ALLEGED ASSOC./MEMBER BEFORE SUCH INFO
CAN BE CONSIDERED AS A SOURCE ITEM.

"1. THERE IS NO SPECIFIC DATE, TIME, PLACE WHERE THIS ALLEGED GANG ACTIVITY
TOOK PLACE. (CONFIDENTIAL MEMO DATED 5-22-06)

"2. THIS INFO 'SUPPOSED' GANG ACTIVITY IS BASED ON DEBRIEFER(S) WHO ARE COERCED
INTO STATING VAGUE STATEMENTS BY IGT OFFICIALS, UNDER PRESSURE & DURESS
THEY ARE MORE LIKELY THAN NOT TO INVENT LIES TO STAY OUT OF THE (SHU)
WHERE THE PEOPLE THEY ARE 'DEBRIEFING' ABOUT ARE HELD.

"3. THESE 'SUPPOSED' DEBRIEFERS ALLEGEDLY 'INCRIMINATED' THEMSELVES IN
A CRIMINAL ACTIVITY AT THE TIME OF PROVIDING THESE FALSE STATEMENTS.

DEBRIEFERS WILL MANIPULATE, MISREPRESENT AND OR GIVE UP THEIR OWN
PARENTS IN ORDER TO STAY OUT OF THE (SHU) SECURITY HOUSING UNIT. ALSO IF
THIS WAS SUCH 'INCRIMINATING EVIDENCE' WHY HAVE I NOT RECEIVED A
C.D.C. 115 FOR THIS 'PUNISHABLE CRIMINAL ACTIVITY'?

(B) CONFIDENTIAL MEMO (1030) DATED 5-22-06 DOES NOT STATE SPECIFIC ACTS, DATES
TIMES AND LOCATIONS OF 'ALLEGED' GANG ACTIVITY. IT DOES NOT STATE ANYTHING
OTHER THAN 'HERESAY' THAT ANYONE CAN MAKE UP AND INVENT JUST BY KNOWING
WHY YOU ARE IN THE SHU. ("23") CASTILLO V. ALAMIDA - HERESAY CANNOT BE USED
AND WILL BE EXCLUDED FROM ANY RECORD. TO WIT: 'EXCLUSIVE RELIANCE ON
'HERESAY' FROM CONFIDENTIAL SOURCES [WILL NOT] BE USED AS A SOURCE ITEM
FOR VALIDATION.

(C) CONFIDENTIAL MEMO (1030) DATED "JULY 16TH 2004" DOES NOT GIVE SPECIFIC →

(2) EXH. E

(4) - EXH. E

Pg. 1
DEPARTMENT OF CORRECTIONS

STATE OF CALIFORNIA

NAME: ROSBRUGH, Cody
(REV. 4/74)

CDC # J-81708

CDC 128-B

On Friday, August 03, 2007, copies of all 1030 Confidential Disclosure forms for confidential documents being utilized during the Active/Inactive Review were provided to inmate **ROSBRUGH, J-81708** for his review. These documents are being submitted to the Office of Correctional Safety (OCS) relevant to an Active/Inactive review in order to update the gang status of inmate **ROSBRUGH**. Inmate **ROSBRUGH** has a GED and did not request staff assistance for his response.

1. Confidential Memorandum dated May 22, 2006; Documented is that **ROSBRUGH** was forwarding information regarding Aryan Brotherhood (AB) politics to another member of the NLR. Along with this information **ROSBRUGH** was also providing instruction on acts required to be accomplished by order of the AB. This activity associated with the AB is significantly related to the NLR as the formation and prison activities of the NLR have been conducted with the approval of the AB. NLR members have been utilized as group for recruitment into the AB. The politics of the NLR regarding the AB have been undecided with many NLR members taking the stance of "FTB" (Fuck the Brand) do to the manipulation of the NLR and arrogant attitudes displayed toward the NLR by AB members. **ROSBRUGH**'s assistance with forwarding orders of the AB displays his personal feelings of the AB as been held in high regard. This document meets the criteria set forth in CCR 3378 (c) (8) (M), Debriefing reports.

* Seems Appaled **

THIS (1030) DOES NOT STATE SPECIFIC ACTS, DATES, TIMES, PLACES OF ALLEGED GANG ACTIVITY. WHO SPECIFICALLY WAS I FORWARDING INFO TO? WHO SPECIFICALLY DID I PROVIDE INSTRUCTION TO? ON WHAT DATE? WHERE? THIS IS "HEARSAY". THIS STATES THE DATE THE DEBRIEFER WAS "SUPPOSED" INFO. IT DOES NOT GIVE THE DATE OF MY ALLEGED "GANG ACTIVITY". WAS THIS DEBRIEFER INTIMIDATED OR COERCED INTO GIVING FALSE OR INCORRECT INFO SO AS TO BE ABLE TO STAY OUT OF THE SICK OR C.P. (Criminal Population)? WAS THIS RECORDED IN MY (810 CONFIDENTIAL INFO LISTING)? IS THIS SOURCE ITEM A RUSE TO PROVIDE "HEARSAY" IN ORDER TO MAKE A QUOTA FOR I.G.I. WAS THIS DEBRIEFER GIVEN A PETEROPPI? WHERE WAS I WHEN THIS ALLEGED "ACTIVITY OCCURRED"? WHAT INFORMATION SPECIFICALLY DID I ALLEGEDLY FORWARD?

2. Confidential Memorandum dated July 16, 2004; Documented is that **ROSBRUGH** is identified as a member of the NLR who is giving orders to other white inmates. **ROSBRUGH** is also identified as targeting inmates for assault if they do not comply with these orders. This document meets the criteria set forth in CCR 3378 (c) (8) (M), Debriefing reports.

* Seems Appaled **

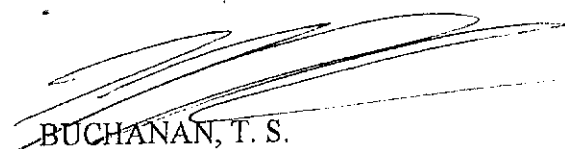
THIS (1030) DOES NOT STATE SPECIFIC ACTS, DATES, TIMES, PLACES OF ALLEGED "GANG ACTIVITY". WHO SPECIFICALLY DID I GIVE ORDERS TO? IT IS LIKE TO CALL THEM AS WITNESSES. WHO SPECIFICALLY DID I TARGET? I WOULD LIKE TO CALL THEM AS WITNESSES. WHERE WAS I WHEN THIS ALLEGED "ACTIVITY OCCURRED"? ON WHAT DATE? THIS FORM (1030) STATES THE DATE THE DEBRIEFER "GAVE SUPPOSED INFO". IT DOES NOT GIVE A DATE AS TO MY ALLEGED "GANG ACTIVITY". WHAT SPECIFICALLY WAS THE "ORDERS" I WAS ALLEGEDLY GIVING? WAS DEBRIEFER GIVEN A PETEROPPI? WAS THIS DEBRIEFER COERCED INTO GIVING FALSE OR INCORRECT INFO SO AS TO BE ABLE TO STAY OUT OF THE SICK OR C.P. (Criminal Population)? IS THIS A RUSE TO PROVIDE "HEARSAY" IN ORDER TO MAKE A QUOTA FOR I.G.I.

BOTH OF THESE DOCUMENTS ARE UNTRUE AND UNDER CASTLED & ALLEGEDLY IN-ADMISSIBLE AS EVIDENCE. AS "HEARSAY", "LAUNDRY LIST" AND THEY DO NOT GIVE SPECIFIC DATES, TIMES, PLACES, ACTS OF ALLEGED GANG ACTIVITY.

(s) ex. E

~~EXHIBITS~~~~P12~~

This response form was collected from inmate **ROSBRUGH** on 8-6-07
by Gang Investigations Officer T. S. Buchanan. Inmate **ROSBRUGH**'s response to these items will be
considered by the Office of Correctional Safety prior to determining **ROSBRUGH**'s gang status.


BUCHANAN, T. S.
Correctional Officer
Institution Gang Investigations
Pelican Bay State Prison

DATE: August 3, 2007

GANG INVESTIGATION CHRONO

CDC 128B

CONTINUED -

BOTH of these documents DO NOT GIVE ANY INFORMATION, A SPECIFIC DATE, TIME, PLACE, ACT. THEY ARE VAGUE AND DO NOT STATE ANYTHING BUT HARSAY.

I REQUEST THAT THEY BE REMOVED FROM MY FILES AND NOT NOW NOR IN THE FUTURE BE USED AGAINST ME.

I'D FURTHER LIKE TO POINT OUT THAT BOTH DOCUMENTS GIVE DATES THE "DABRIETER(S) GAVE INFORMATION". THEY DO NOT GIVE THE DATE MY "ALLEGED" ACTIVITY TOOK PLACE. WHICH IS THE WHOLE POINT

OF ACTIVE/INACTIVE STATUS. WHEN DID THE ACTIVITY HAPPEN?

NOT WHEN DID THE DABRIETER DABRIET? ITS HOW YOU PULL FACT FROM FICTION.

PELICAN BAY STATE PRISON
SECURITY HOUSING UNIT
UNIT D-1

(s) ex. E

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

NAME: ROSBRUGH, Cody

CDC # J-81708

CDC 128-B (REV. 4/74)

On Thursday, July 26, 2007 an investigation was initiated, by the Institution Gang Investigation (IGI) Unit, in reference to inmate **Cody ROSBRUGH, J-81708, aka "Big Rhino from San Bernardino"** per the California Code of Regulations (CCR), Title 15, Section 3378 (e), in order to update his gang status. **ROSBRUGH** was validated as a member of the Nazi Low Rider prison gang on November 16, 1998; gang status was updated on CDC 128B-2 dated June 3, 2003. The source items used to validate **ROSBRUGH** are all over six (6) years old. Therefore, per the CCR, Title 15, Section 3378 (e), **ROSBRUGH** meets the criteria for an Inactive Status Review. During this current investigation the following areas were reviewed relevant to Nazi Low Rider prison gang activity.

ARCHIVES: **ROSBRUGH** has a discharged CDC number of **J-30361**. This number has been discharged in excess of six years; therefore, the associated archive file would contain no recent gang activity.

CAL GANGS: Was unable to provide any information involving current gang activities associated with **ROSBRUGH**.

CELL SEARCH: On Monday, July 30, 2007 **ROSBRUGH** was photographed for identification purposes relative to the inactive review. Upon conclusion of the photographing a search was conducted of **ROSBRUGH's** assigned cell to include all State and personal property. No gang related material was discovered during the course of the search.

CENTRAL FILE: A review into the Central File of **ROSBRUGH** revealed the following documents which contains recent activity with the Nazi Low Rider prison gang.

1. Confidential Memorandum dated May 22, 2006; Documented is that **ROSBRUGH** was forwarding information regarding Aryan Brotherhood (AB) politics to another member of the NLR. Along with this information **ROSBRUGH** was also providing instruction on acts required to be accomplished by order of the AB. This activity associated with the AB is significantly related to the NLR as the formation and prison activities of the NLR have been conducted with the approval of the AB. NLR members have been utilized as group for recruitment into the AB. The politics of the NLR regarding the AB have been undecided with many NLR members taking the stance of "FTB" (Fuck the Brand) do to the manipulation of the NLR and arrogant attitudes displayed toward the NLR by AB members. **ROSBRUGH's** assistance with forwarding orders of the AB displays his personal feelings of the AB as been held in high regard. This document meets the criteria set forth in CCR 3378 (c) (8) (M), Debriefing reports.
2. Confidential Memorandum dated July 16, 2004; Documented is that **ROSBRUGH** is identified as a member of the NLR who is giving orders to other white inmates. **ROSBRUGH** is also identified as targeting inmates for assault if they do not comply with these orders. This document meets the criteria set forth in CCR 3378 (c) (8) (M), Debriefing reports.

LOCAL LAW ENFORCEMENT: Was unable to provide any information involving current gang activities associated with **ROSBRUGH**.

OFFICE OF CORRECTIONAL SAFETY: Was unable to provide any information involving current gang activities associated with **ROSBRUGH**.

PAROLES/LEADS: Was unable to provide any information involving current gang activities associated with **ROSBRUGH**.

PELICAN BAY STATE PRISON
SECURITY HOUSING UNIT
UNIT D-1

(7) EXH. E

~~Exhibit 10~~~~P-4~~

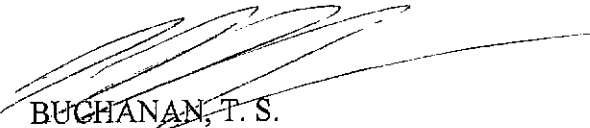
WSIN: Was unable to provide any information involving current gang activities associated with **ROSBRUGH**.

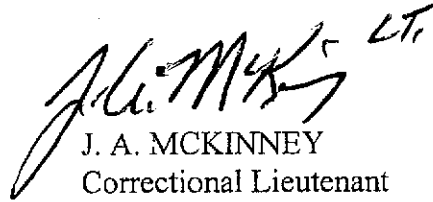
On Friday, August 3, 2007, **ROSBRUGH** was issued 1030, Confidential Disclosure forms for the confidential documents utilized in the Inactive Status Review. **ROSBRUGH** was informed that the Institutional Gangs Investigation (IGI) Unit would interview him after 24 hours regarding the information used in the update. **ROSBRUGH** was informed that during the interview he would have the opportunity to present his response regarding the information used. **ROSBRUGH** has a GED and did not request staff assistance. **ROSBRUGH** is not a participant in the Mental Health Delivery System.

On Monday, August 6, 2007, **ROSBRUGH** was interviewed relative to the documents used in the review. **ROSBRUGH** submitted the two provided response sheets with his defense to the documents being used during the inactive review. All submitted documentation and supporting arguments have been considered, including the interview conducted during this review. Based on the information obtained during this investigation it is the opinion of this investigator the submission of this validation is warranted.

Based on the above information and documentation, it is reasonable to believe that **ROSBRUGH** is active with the Nazi Low Rider prison gang. The confidential documents reviewed comply with the Department Operations Manual (DOM), Section 61020.7 and requirements established in the CCR regarding prison gangs.

Pursuant to the CCR, Title 15, Section 3378 (c), the IGI Unit recommends that the gang status of **Cody, ROSBRUGH, J-81708**, as a member of the Nazi Low Rider prison gang remain unchanged. At **ROSBRUGH**'s request, he will be eligible for an Inactive Gang Status Review after July of 2010. This date is based upon information contained in **ROSBRUGH**'s central file, specifically the Confidential Memorandum dated May 22, 2006 evidencing NLR gang activity in July, 2004. This information will be forwarded to the Office of Correctional Safety to update **ROSBRUGH**'s gang status.


BUCHANAN, T. S.
 Correctional Officer
 Institution Gang Investigations
 Pelican Bay State Prison


J. A. MCKINNEY
 Correctional Lieutenant
 Institution Gang Investigator
 Pelican Bay State Prison

DATE: August 6, 2007

IGI GANG STATUS UPDATE

CDC 128B

PELICAN BAY STATE PRISON
 SECURITY HOUSING UNIT
 UNIT D-1

(7) EXH. E

State of California

CDC FORM 695

Screening For:

CDC 602 Inmate/Parolee Appeals

CDC 1824 Reasonable Modification or Accommodation Request

RE: Screening at the FIRST Level

October 9, 2007

ROSBROUGH, J81708

DF01U 000000213L

Log Number: PBSP-D-

(Note: Log numbers are not assigned to screen out appeals or informal level appeals.)

The enclosed documents are being returned to you for the following reasons:

*You are appealing an action or decision that has not yet occurred. Such issues are not appealable until they happen. (CCR 3084.3(c)(3)).***UPON RECEIPT OF UPDATED 128-B2 FROM OCS, ATTACH AND FORWARD
APPEAL AT THAT TIME.**

Appeals Coordinator

Pelican Bay State Prison

NOTE: Failure to follow instruction(s) will be viewed as non-cooperation and your appeal will be automatically dismissed pursuant to CCR 3084.4(d). This screening decision may not be appealed. If you believe this screen out is in error, please return this form to the Appeals Coordinator with an explanation of why you believe it to be in error, and supporting documents. You have only 15 days to comply with the above directives.

PERMANENT APPEAL ATTACHMENT – DO NOT REMOVE

OCT 09 2007

(8) ExH.E

EXHIBIT F

702-B
9-21-07

STATE OF CALIFORNIA

PELICAN BAY STATE PRISON SECURITY HOUSING UNIT

DEPARTMENT OF CORRECTIONS

INMATE/PAROLEE APPEAL FORM

CDC 802 (12/87)

Location: Institution/Parole Region

1. **PBSP** -1

Category

6/8

2. _____

2. _____

You may appeal any policy, action or decision which has a significant adverse effect upon you. With the exception of Serious CDC 115s, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeals Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

NAME	NUMBER	ASSIGNMENT	UNIT/ROOM NUMBER
<u>Rob Brien</u>	<u>3-81708</u>		<u>D-1-213</u>

A. Describe Problem: ON 10-5-07 I RECEIVED A C.D.C. 128-B CALL, STATING THAT WHILE CONDUCTING A SEARCH OF THE BENTLEY J-21514 CALL AN ALLEGED "RYAN BROTHURTON ASSOCIATE" ON SEPTEMBER 19TH 07 C/O B. THURTON (I.G.I.) FOUND A 1999 CALIFORNIA WITH THE NAMES OF (3) INDIVIDUALS, ONE OF THE NAMES, ALLEGEDLY MINE. IT STATED THAT THE DATE MENTIONED/MARKED WAS MY BIRTHDAY. THAT C/O B. THURTON'S OPINION IS THAT THIS IS DIRECT ASSOCIATION BETWEEN SUPPOSED VALIDATED MEMBERS/ASSOC. AND THAT THIS SHOULD BE USED AS CONSIDERATION FOR A POINT IN THE VALIDATION PROCESS. IT IS BLATANTLY CLEAR THAT I.G.I.

If you need more space, attach one additional sheet.

B. Action Requested: FOR THIS 128-B CALL TO BE STRICKEN FROM MY CENTRAL FILE & MY OTHER FILE AS IT DOES NOT PROVE ANYTHING. LEAST OF ALL, GENUINE ASSOCIATION. THAT I.G.I. STAFF BE RE-TRAINED ON WHAT IS & IS NOT GENUINE ACTIVITY, ASSOCIATION. AND FURTHER THAT THAT (I.G.I.) STOP TRYING TO PAD FILES WITH FALSE CALLS.

Inmate/Parolee Signature: [Signature] Date Submitted: 10-12-07

C. INFORMAL LEVEL (Date Received: _____)

Staff Response: _____

Staff Signature: _____ Date Returned to Inmate: _____

D. FORMAL LEVEL

If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigator's Report, Classification chrono, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.

Signature: _____ Date Submitted: _____

Note: Property/Funds appeals must be accompanied by a completed

CDC Appeal Number:

Board of Control form BC-1E, Inmate Claim

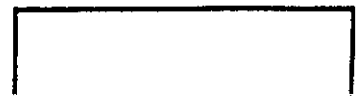
Oct 11 2007

OCT 17 2007

10

10

① EXH.F



PELICAN BAY STATE PRISON
SECURITY HOUSING UNIT

CONTINUED. A.

② EXH. F UNIT D-1

C/O Nelson is unaware of what is and is not direct association.
also that federal and state law prohibits stuff such as 'lie'
from using ANY material such as cheating card, notes of
Saturdays and/or Saturday / natural colds.

This is not only a disregard for state and federal law. It is
it is "INTERPRETING" the rules & laws to fit their ideas and
opinions

See state / federal law. case: CASTILLO, STELLAN VS. EDUARDO S. ALARCON
(case no. C-94-2847-MJ-JLS) SETTLEMENT Pgs. 5-6 Paragraphs
15-16)

② EXH. F.

NAME and NUMBER

ROSBRUGH

J-21514

CELL: D01-213L

On Wednesday, September 19, 2007, while assigned to the Institutional Gang Investigations (IGI), I searched the property of validated Aryan Brotherhood (AB) associate Douglas BENTLEY J-21514, aka "Doug the Barber", D01-209L. Found amid the property of BENTLEY was calendar containing birthdates of three validated Nazi Low Rider members/ associates.

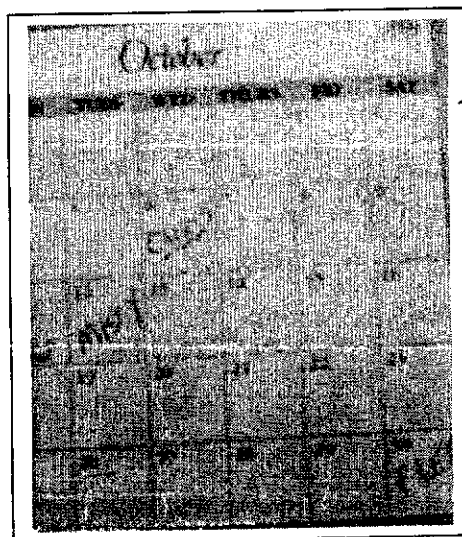
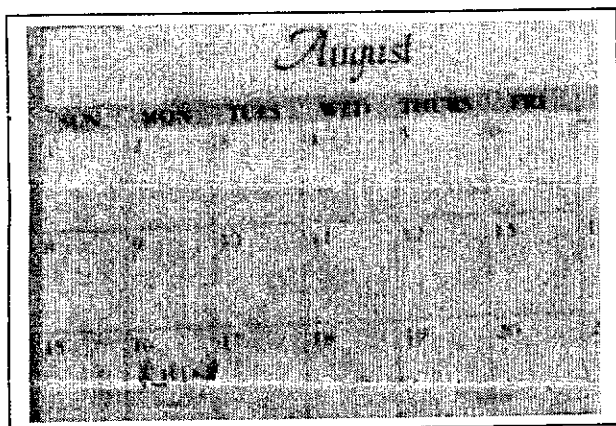
Written on August 16, was Rhino. Rhino has been identified as validated NLR member **Cody ROSBRUGH J-81708**, aka "Rhino from San Bernardino", D.O.B. 8-16-1976.

On October 30, BENTLEY had written Flea. Flea has been identified as validated NLR member Lynden VANATTI E-21232 aka "Flea from Baldwin Park", D.O.B. 10-30-1966.

Written on December 10 was Lefty. Lefty has been identified as validated NLR associate Robert ENGLAND H-94119, aka "Lefty from Inland Empire", D.O.B. 12-10-1963.

With these names written on the specific date of their birthday in a validated AB associates personal calendar, clearly establishes a direct association between these identified NLR members/associates and an AB associate. This documentation should be considered as one point in the validation process of the listed inmates above as associates of the Aryan Brotherhood prison gang.

This documentation meets the criteria for gang involvement as prescribed in California Code of Regulations (CCR) Title 15, Section 3378 (c) (8) (G) Association.



ORIG : C-File
cc : GANGS

B. THORNTON
Correctional Officer
Institutional Gang Investigations

DATE 9-21-07

GANG CHRONO

PBSP

③ Exhibit "f"

State of California
CDC FORM 695

Screening For:

CDC 602 Inmate/Parolee Appeals

CDC 1824 Reasonable Modification or Accommodation Request

① Exhibit "f"

RE: Screening at the FIRST Level

October 12, 2007

ROSBROUGH, J81708

DF01U 000000213L

Log Number: PBSP-D-

(Note: Log numbers are not assigned to screen out appeals or informal level appeals.)

The enclosed documents are being returned to you for the following reasons:

You are appealing an action or decision that has not yet occurred. Such issues are not appealable until they happen. (CCR 3084.3(c)(3)).

YOUR ARE ATTEMPTING TO APPEAL A 128-B INFORMATIONAL CHRONO OF STAFF'S OBSERVATIONS AS THEY PERCEIVED IT. THIS IS NOT A DISCIPLINARY CHRONO AND IN NO WAY ADVERSELY AFFECTS YOU AT THIS TIME. CCR 3084 REQUIRES "DEMONSTRATE AS HAVING AN ADVERSE AFFECT." THIS IS CURRENT, PRESENT TENSE LANGUAGE. SHOULD THIS INFORMATION BE USED TO ADVERSELY AFFECT YOUR CONDITIONS OF CONFINEMENT IN THE FUTURE, YOU CAN CERTAINLY APPEAL AT THAT TIME, HOWEVER THE REGULATIONS DO NO ALLOW FOR ACCEPTING YOUR APPEAL AT THIS POINT.



Appeals Coordinator
Pelican Bay State Prison

REDUTTA reviewed.
Screening Decision
STANDS.
L. WENZEL, AC

NOTE: Failure to follow instruction(s) will be viewed as non-cooperation and your appeal will be automatically dismissed pursuant to CCR 3084.4(d). This screening decision may not be appealed. If you believe this screen out is in error, please return this form to the Appeals Coordinator with an explanation of why you believe it to be in error, and supporting documents. You have only 15 days to comply with the above directives.

PERMANENT APPEAL ATTACHMENT - DO NOT REMOVE

OCT 11 2007

OCT 17 2007

① Exhibit "f"

(b) Exh. F

CELL WILLBAR.

10-16-07

I WOULD LIKE YOU TO PROCESS MY APPEAL.

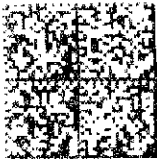
THIS CURRENT DOES ADVERSELY AFFECT ME BECAUSE IT IS NOT A "STAFF" OBSERVATION. IT IS HIS OPINION WITH OUT ANY EXPLANATION AS TO HOW THIS IS GANG ASSOCIATION AND IT GOES BEYOND STAFF "OPINION" WHEN HE SAY (THIS DOCUMENTATION SHOULD BE USED AS ONE POINT IN THE VALIDATION PROCESS.)

THAT CLEARLY ADVERSELY AFFECTS ME, AND THE FACT THAT IT IS IN MY FILE. AS FALSE INFORMATION.

PER TITLE 15 3378(C)(8)(6) CIO THORNTON MUST GIVE A SATISFACTORY REASON WHY THIS "INFORMATION" IS INDICATIVE OF ASSOCIATION. FALSE. THIS DOES ADVERSELY AFFECT ME BECAUSE IT IS NOT IN MY FILE FOR MY BENEFIT. IT'S THERE TO KEEP ME VALIDATED.

I WOULD APPRECIATE IT IF YOU PROCESS MY APPEAL IF STAFF ARE PERMITTED TO MAKE AN OBSERVATION. THAT'S FINE. BUT WHEN THEY RECOMMEND AN ACTION BE TAKEN BASED ON THEIR "OBSERVATION" IT'S NO LONGER JUST AN OBSERVATION.

(b) Exh. F



PELICAN BAY STATE PRISON
5905 Lake East Dr
Crescent City CA 95532

TO: COURT CLERK
US DISTRICT NORTHERN CA.
450 GOLDEN GATE AVE
SAN FRANCISCO CA.
94102

PELICAN BAY STATE PRISON
SECURITY HOUSING UNIT
UNIT D-1

RECEIVED
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIF.

FEB 25 2008

FILED

* Legal Mail 1 of 2

0-1-213
P.O. Box 7500
Crescent City CA. 95532

ATTENTION COURT CLERK.

2-17-08

HELLO. I'm WRITING BECAUSE MY \$5.00 FILING FEE
WAS SENT SEPARATELY. I've JUST RECEIVED THE
RECEIPT.

I DID NOT KNOW IT WOULD BE SENT SEPARATELY.
HERE IS THE CHECK #

283-149781

ALSO PLEASE SEND A COPY OF THE STAMPED FEE SHEET
SO I CAN KNOW IT WAS FILED.

CV 08

1178

THANK YOU,

JF

(PR)

CODY ROSEBRUGH-J-81708

D-1-213 / P.O. BOX 7500

CRESCENT CITY CA. 95532